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LAWS OF JAMMU AND KASHMIR.

(Being a collection of all the enactments, whether passed by the Praja Sabha and assented to by His Highness the Maharaja Bahadur or made and issued by His Highness, and in force in the Jammu and Kashmir State).

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1977 TO 1989.



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THE DESTRUCTION OF RECORDS ACT, 1977.

Act No. XII of 1977.

[Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No. 8372, dated 11th September, 1920 and State Council Resolution No. 1, dated 8th April 1925. (Notification No. 14-L/81).]

An Act to consolidate and amend the law providing for the destruction or other disposal of certain documents in the possession or custody of Courts and Revenue or other public officers.

WHEREAS it is expedient to consolidate and amend the law providing for the destruction or other disposal of certain documents in the possession or custody of Courts and Revenue or other public officers; It is hereby enacted as follows :—

- ¹ 1. Omitted.
2. Omitted.
3. (1) The authorities hereinafter specified may, from time to time, make rules for the disposal by destruction or otherwise, of such documents as are, in the opinion of the

Power to certain authorities to make rules for disposal of documents.

¹ Short title, extent and commencement are given and regulated by Act IV of 1977.

authority making the rules, not of sufficient public value to justify their preservation.

(2) The authorities shall be—

(a) in the case of documents in the possession or custody of the High Court or of the Courts of Civil and Criminal jurisdiction subordinate thereto,—the High Court ;

(b) in the case of documents in the possession or custody of Revenue Courts and officers,—the ¹[Government or any officer specifically authorised in this behalf by the Government]; and

(c) in the case of documents in the possession or custody of any other public officer.—

²[the Government] or any officer specially authorised in that behalf by ³[the Government.]

(3) Rules made under this section ³[by any authority other than the Government] shall be subject to the previous approval of the ²[Government]

4. All rules and orders directing or authorising the destruction or other disposal of documents in the possession or custody of any public officer, heretofore in force, shall be

Validation of former rules for disposal of documents.

deemed to have had the force of law from the date on which they were made, and all such rules and orders now in force shall continue to have the force of law until they are superseded by rules made under this Act.

5. Nothing in this Act shall be deemed to authorise the destruction of any document, which, under

Saving of certain documents.

the provisions of any law for the time being in force, is to be kept and maintained.

— —

¹Substituted for the words "Revenue Minister" vide Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

²Substituted for "His Highness" vide Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

³Inserted vide Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

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[Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No. 8,372, dated 1th September, 1920 and State Council Resolution No. 1, dated 8th April, 1925. (Notification No. 14-L/81).]

WHEREAS it is expedient to consolidate, define and amend
 Preamble, the Law of Evidence ; It is hereby enacted
 as follows :—

PART I.**Relevancy of Facts.****CHAPTER I.****PRELIMINARY.**

1. It applies to all judicial proceedings in or before any
 Extent Court, including Courts-martial, but not
 to affidavits presented to any Court or
 officer, nor to proceedings before an arbitrator.

2. Nothing herein contained shall be deemed to affect any
 provision of any Law, Act or Regulation in force in any part
 of the State and not hereby expressly repealed.

3. In this Act the following words and expressions are
 Interpretation clause, used in the following senses, unless a
 context :— contrary intention appears from the

“Court” includes all Judges and Magistrates, and all
 “Court.” persons, except arbitrators, legally
 authorised to take evidence.

“Fact” means and includes—

“Fact”

- (1) any thing, state of things, or relation of things
 capable of being perceived by the senses ;
- (2) any mental condition of which any person is
 conscious.

¹Short title, extent and commencement are given and regulated by Act IV of 1977.

Illustrations.

(a) That there are certain objects arranged in a certain order in a certain place, is a fact.

(b) That a man heard or saw something, is a fact.

(c) That a man said certain words, is a fact.

(d) That a man holds a certain opinion, has a certain intention, acts in good faith, or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.

(e) That a man has certain reputation is a fact.

One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

“Relevant.”

“Facts in issue.”

The expression “facts in issue” means and includes—

any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows.

EXPLANATION.—Whenever, under the provisions of the law for the time being in force relating to Civil Procedure, any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue is a fact in issue.

Illustrations.

A is accused of the murder of B.

At his trial the following facts may be in issue:—

that A caused B's death;

that A intended to cause B's death;

that A had received grave and sudden provocation from B;

that A, at the time of doing the act which caused B's death, was, by reason of unsoundness of mind, incapable of knowing its nature.

“Document” means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

“Document.”

Illustrations.

A writing is a document;

Words printed, lithographed or photographed are documents;

A map or plan is a document;

An inscription on a metal plate or stone is a document;

A caricature is a document.

“Evidence.”

“Evidence” means and includes—

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters

of fact under inquiry :

such statements are called oral evidence ;

(2) all documents produced for the inspection of the Court :

such documents are called documentary evidence.

A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

“Proved.”

A fact is said to be disproved when, after considering the matters before it the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

“Disproved.”

A fact is said not to be proved when it is neither proved nor disproved.

“Not proved.”

4. Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved or may call for proof of it.

“May presume.”

Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved unless and until it is disproved.

“Shall presume.”

When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

“Conclusive proof.”

CHAPTER II.

OF THE RELEVANCY OF FACTS.

5. Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others.

Evidence may be given of facts in issue and relevant facts.

EXPLANATION.—This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to Civil Procedure.

Illustrations.

(a) A is tried for the murder of B by beating him with a club with the intention of causing his death.

At A's trial the following facts are in issue :—

A's beating B with the club ;

A's causing B's death by such beating ;

A's intention to cause B's death ;

(b) A suitor does not bring with him, and have in readiness for production at the first hearing of the case, a bond on which he relies. This section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings, otherwise than in accordance with the conditions prescribed by the Code of Civil Procedure.

6. Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.

Relevancy of facts forming part of same transaction.

Illustrations.

(a) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

(b) A is accused of waging war against the King by taking part in an armed insurrection, in which property is destroyed, troops are attacked and gaols are broken open. The occurrence of these facts is relevant, as forming part of the general transaction, though A may not have been present at all of them.

(c) A sues B for a libel contained in a letter forming part of correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.

(d) The question is, whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

7. Facts which are the occasion, cause or effect, immediate or otherwise, of relevant facts or facts in issue, or which constitute the state of things under which they happened or which afforded an opportunity for their occurrence or transaction are relevant.

Facts which are the occasion, cause or effect of facts in issue.

Illustrations.

(a) The question is, whether A robbed B.

The facts that, shortly before the robbery, B went to a fair with money in his possession, and that he showed it or mentioned the fact that he had it, to third persons, are relevant.

(b) The question is, whether A murdered B.

Marks on the ground, produced by a straggle at or near the place where the murder was committed, are relevant facts.

(c) The question is whether A poisoned B.

The state of B's health before the symptoms ascribed to poison, and habits of B, known to A, which afforded an opportunity for the administration of poison, are relevant facts.

8. Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

Motive, preparation and previous or subsequent conduct

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact and whether it was previous or subsequent thereto.

EXPLANATION 1.—The word “conduct” in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

EXPLANATION 2.—When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

Illustrations.

(a) A is tried for the murder of B.

The facts that A murdered C, that B knew that A had murdered C, and that B had tried to extort money from A by threatening to make his knowledge public, are relevant.

(b) A sues B upon a bond for the payment of money. B denies the making of the bond.

The fact that, at the time when the bond was alleged to be made, B required money for a particular purpose, is relevant.

(c) A is tried for the murder of B by poison.

The fact that, before the death of B, A procured poison similar to that which was administered to B, is relevant.

(d) The question is whether a certain document is the will of A.

The facts, that not long before the date of the alleged will A made inquiry into matters to which the provisions of the alleged will relate; that he consulted vakils in reference to making the will, and that he caused drafts of other wills to be prepared, of which he did not approve, are relevant.

(e) A is accused of a crime.

The facts that, either before or at the time of or after the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence or prevented the presence or procured the absence of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant.

(f) The question is, whether A robbed B.

The facts that, after B was robbed, C said in A's presence—“the police are coming to look for the man who robbed B,” and that immediately afterwards A ran away, are relevant.

(g) The question is, whether A owes B rupees 10,000.

The facts that A asked C to lend him money, and that D said to C in A's presence and hearing—"I advise you not to trust A, for he owes B 10,000 rupees", and that A went away without making any answer, are relevant facts.

(h) The question is, whether A committed a crime.

The fact that A absconded after receiving a letter warning him that inquiry was being made for the criminal, and contents of the letter, are relevant.

(i) A is accused of a crime.

The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.

(j) The question is, whether A was ravished.

The facts that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that, without making a complaint, she said that she had been ravished is not relevant as conduct under this section, though it may be relevant—

as a dying declaration under section 32, clause (1), or as corroborative evidence under section 157.

(k) The question is, whether A was robbed.

The fact that, soon after the alleged robbery, he made a complaint relating to the offence, the circumstances under which, and the terms in which, the complaint was made, are relevant—

The fact that he said he had been robbed without making any complaint, is not relevant, as conduct under this section, though it may be relevant

as a dying declaration under section 32, clause (1), or as corroborative evidence under section 157.

9. Facts necessary to explain or introduce a fact in issue

or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the

identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

Illustrations.

(a) The question is, whether a given document is the will of A.

The state of A's property and of his family at the date of the alleged will may be relevant facts.

(b) A sues B for a libel imputing disgraceful conduct to A; B affirms that the matter alleged to be libellous is true.

The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue.

The particulars of a dispute between A and B about a matter unconnected with the alleged libel are irrelevant, though the fact that there was a dispute may be relevant if it affected the relations between A and B.

(c) A is accused of a crime.

The fact that soon after the commission of the crime, A absconded from his house, is relevant under section 8, as conduct subsequent to and affected by facts in issue.

The fact that at the time when he left home he had sudden and urgent business at the place to which he went is relevant, as tending to explain the fact that he left home suddenly.

The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent.

(d) A sues B for inducing C to break a contract of service made by him with A. C, on leaving A's service says to A "I am leaving you because B has made me a better offer." This statement is a relevant fact as explanatory of C's conduct, which is relevant as a fact in issue.

(e) A, accused of theft, is seen to give the stolen property to B, who is seen to give it to A's wife. B says as he delivers it—"A says you are to hide this". B's statement is relevant as explanatory of a fact which is part of the transaction.

(f) A is tried for a riot and is proved to have marched at the head of a mob. The cries of the mob are relevant as explanatory of the nature of the transaction.

10. Where there is reasonable ground to believe that two

Things said or done by conspirator in reference to common design. or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

Illustration.

Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the King.

The facts that B procured arms in Europe for the purpose of the conspiracy, C collected money in Calcutta for a like object, D persuaded persons to join the conspiracy in Bombay, E published writings advocating the object in view at Agra, and F transmitted from Dehli to G at Cabul the money which C had collected at Calcutta, and the contents of a letter written by H giving an account of the conspiracy, are each relevant, both to prove the existence of the conspiracy, and to prove A's complicity in it, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy or after he left it.

11. Facts not otherwise relevant are relevant—

When facts not otherwise relevant become relevant.

(1) if they are inconsistent with any fact in issue or relevant fact;

(2) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.

Illustrations.

(a) The question is whether A committed a crime at Srinagar, on a certain day.

The fact that, on that day, A was at Jammu is relevant.

The fact that, near the time when the crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.

(b) The question is, whether A committed a crime.

The circumstances are such that the crime must have been committed either by A, B, C or D. Every fact which shows that the crime could have been committed by no one else and that it was not committed by either B, C, or D is relevant.

12. In suits in which damages are claimed, any fact which will enable the Court to determine the amount of damages which ought to be awarded, is relevant.

In suits for damages, facts tending to enable Court to determine amount, are relevant.

13. Where the question is as to the existence of any right or custom, the following facts are relevant:—

Facts relevant when right or custom is in question.

(a) any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted or denied, or which was inconsistent with its existence;

(b) particular instances in which the right or custom was claimed, recognized or exercised, or in which its exercise was disputed, asserted or departed from.

Illustration.

The question is whether A has a right to a fishery. A deed conferring the fishery on A's ancestors, a mortgage of the fishery by A's father, a subsequent grant of the fishery by A's father, irreconcilable with the mortgage, particular instances in which A's father exercised the right, or in which the exercise of the right was stopped by A's neighbours, are relevant facts.

14. Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will or good-will towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant, when the existence of any such state of mind or body or bodily feeling is in issue or relevant.

EXPLANATION 1—A fact relevant as showing the existence of a relevant state of mind must show that the state of mind

exists, not generally, but in reference to the particular matter in question.

EXPLANATION 2.—But where, upon the trial of a person accused of an offence, the previous commission by the accused of an offence is relevant within the meaning of this section, the previous conviction of such person shall also be a relevant fact.

Illustrations.

(a) A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article.

The fact that, at the same time, he was in possession of many other stolen articles is relevant, as tending to show that he knew each and all of the articles of which he was in possession to be stolen.

(b) A is accused of fraudulently delivering to another person a counterfeit coin which, at the time when he delivered it, he knew to be counterfeit.

The fact that, at the time of its delivery, A was possessed of a number of other pieces of counterfeit coin is relevant.

The fact that A had been previously convicted of delivering to another person as genuine a counterfeit coin knowing it to be counterfeit is relevant.

(c) A sues B for damage done by a dog of B's, which B knew to be ferocious.

The facts that the dog had previously bitten X, Y and Z, and that they had made complaints to B, are relevant.

(d) The question is, whether A, the acceptor of a bill of exchange, knew that the name of the payee was fictitious.

The fact that A had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee if the payee had been a real person, is relevant as showing that A knew that the payee was a fictitious person.

(e) A is accused of defaming B by publishing an imputation intended to harm the reputation of B.

The fact of previous publications by A respecting B, showing ill-will on the part of A towards B, is relevant, as proving A's intention to harm B's reputation by the particular publication in question.

The facts that there was no previous quarrel between A and B, and that A repeated the matter complained of as he heard it, are relevant, as showing that A did not intend to harm the reputation of B.

(f) A is sued by B for fraudulently representing to B that C was solvent, whereby B, being induced to trust C, who was insolvent suffered loss.

The fact that, at the time when A represented C to be solvent, C was supposed to be solvent, by his neighbours and by persons dealing with him, is relevant as showing that A made the representation in good faith.

(g) A is sued by B for the price of work done by B, upon a house of which A is owner, by the order of C, a contractor.

A's defence is that B's contract was with C.

The fact that A paid C for the work in question is relevant, as proving that A did, in good faith, make over to C the management of the work in question, so that C was in a position to contract with B on C's own account and not as agent for A.

(h) A is accused of the dishonest misappropriation of property which he had found, and the question is whether, when he appropriated it, he believed in good faith that the real owner could not be found.

The fact that public notice of the loss of the property had been given in the place where A was, is relevant, as showing that A did not in good faith believe that the real owner of the property could not be found.

The fact that A knew, or had reason to believe that the notice was given fraudulently by C, who had heard of the loss of the property and wished to set up a false claim to it, is relevant, as showing that the fact that A knew of the notice did not disprove A's good faith.

(i) A is charged with shooting at B with intent to kill him. In order to show A's intent the fact of A's of having previously shot at B may be proved.

(j) A is charged with sending threatening letters to B. Threatening letters previously sent by A to B may be proved, as showing the intention of the letters.

(k) The question is, whether A has been guilty of cruelty towards B, his wife.

Expressions of their feeling towards each other shortly before or after the alleged cruelty are relevant facts.

(l) The question is, whether A's death was caused by poison.

Statements made by A during his illness as to his symptoms are relevant facts.

(m) The question is what was the state of A's health at the time an assurance on his life was effected.

Statements made by A as to the state of his health at or near the time in question are relevant facts.

(n) A sues B for negligence in providing him with a carriage for hire not reasonably fit for use, whereby A was injured.

The fact that B's attention was drawn on other occasions to the defect of that particular carriage is relevant.

The fact that B was habitually negligent about the carriages which he let to hire is irrelevant.

(o) A is tried for the murder of B by intentionally shooting him dead.

The fact that A on other occasion shot at B is relevant as showing his intention to shoot B.

The fact that A was in the habit of shooting at people with intent to murder them is irrelevant.

(p) A is tried for a crime.

The fact that he said something indicating an intention to commit that particular crime is relevant.

The fact that he said something indicating a general disposition to commit crimes of that class is irrelevant.

15. When there is a question whether an act was

Facts bearing on question whether act was accidental or intentional. accidental or intentional, or done with a particular knowledge or intention, the fact that such act formed part of series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

Illustrations.

(a) A is accused of burning down his house in order to obtain money for which it is insured.

The facts that A lived in several houses successively, each of which he insured, in each of which a fire occurred, and after each of which fires A received payment from a different insurance office, are relevant, as tending to show that the fires were not accidental.

(b) A is employed to receive money from the debtors of B. It is A's duty to make entries in a book showing the amounts received by him. He makes an entry showing that on a particular occasion he received less than he really did receive.

The question is, whether this false entry was accidental or intentional.

The facts that other entries made by A in the same book are false, and that the false entry is in each case in favour of A, are relevant.

(c) A is accused of fraudulently delivering to B a counterfeit rupee,

The question is, whether the delivery of the rupee was accidental.

The facts that, soon before or soon after the delivery to B, A delivered counterfeit rupees to C, D and E are relevant, as showing that the delivery to B was not accidental.

16. When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact.

Existence of course of business when relevant.

Illustrations.

(a) The question is, whether a particular letter was despatched.

The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that particular letter was put in that place, are relevant.

(b) The question is, whether a particular letter reached A. The facts that it was posted in due course, and was not returned through the Dead Letter Office, are relevant.

Admissions.

17. An admission is a statement, oral or documentary which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.

Admission defined.

18. Statements made by a party to the proceeding, or by an agent to any such party, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorised by him to make them, are admissions.

Statements made by parties to suits suing or sued in a representative character, are not admissions, unless they were made while the party making them held that character.

by suitor in representative character;

Statements made by—

(1) persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding, and who makes the statement by party interested in subject-matter;

in their character of persons so interested; or

(2) persons from whom the parties to the suit have derived their interest in the subject-matter of the suit,

by person from whom interest derived.

are admissions, if they are made during the continuance of the interest of the persons making the statements.

19. Statements made by persons whose position or liability it is necessary to prove as against any party to the suit, are admissions if such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against them, and if they are made whilst the person making them occupies such position or is subject to such liability.

Admission by persons whose position must be proved as against party to suit.

Illustrations.

A undertakes to collect rents for B.

B sues A for not collecting rent due from C to B.

A denies that rent was due from C to B.

A statement by C that he owed B rent is an admission and is, a relevant fact as against A, if A denies that C did owe rent to B.

20. Statement made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions.

Admissions by persons expressly referred to by party to suit.

Illustration.

The question is whether a horse sold by A to B is sound. A says to B—“Go and ask C; C knows all about it,” C’s statement is an admission.

21. Admissions are relevant and may be proved as against the person who makes them, or his representative in interest; but they cannot be proved by or on behalf of the person who makes them or by his representative in interest, except in the following cases;—

Proof of admission against person making them and by or on their behalf.

(1) An admission may be proved by or on behalf of the person making it, when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under section 32.

(2) An admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

(3) An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission.

Illustrations.

(a) The question between A and B is, whether a certain deed is or is not forged. A affirms that it is genuine, B that it is forged.

A may prove a statement by B that the deed is genuine, and B may prove a statement by A that the deed is forged; but A cannot prove a statement by himself that the deed is genuine, nor can B prove a statement by himself that the deed is forged.

(b) A is accused of a crime committed by him at Srinagar.

He produces a letter written by himself and dated at Jammu on that day, and bearing the Jammu post-mark of that day.

The statement in the date of the letter is admissible, because, if A were dead, it would be admissible under section 32, clause (2).

(c) A is accused of receiving stolen goods knowing them to be stolen.

He offers to prove that he refused to sell them below their value.

A may prove these statements, though they are admissions, because they are explanatory of conduct influenced by facts in issue.

(d) A is accused of fraudulently having in his possession counterfeit coin which he knew to be counterfeit.

He offers to prove that he asked a skilful person to examine the coin as he doubted whether it was counterfeit or not, and that that person did examine it and told him it was genuine.

A may prove these facts for the reasons stated in the last preceding illustration.

22. Oral admission as to the contents of a document are not relevant, unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained, or unless the genuineness of a document produced is in question.

23. In civil cases no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given.

EXPLANATION.—Nothing in this section shall be taken to exempt any barrister, pleader, attorney or vakil from giving evidence of any matter of which he may be compelled to give evidence under section 126.

24. A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person

When oral admissions as to contents of documents are relevant.

— 20-2-1977

Admissions in civil cases when relevant.

Confession caused by inducement, threat or promise, when irrelevant in criminal proceedings.

in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

25. No confession made to a Police officer shall be proved as against a person accused of any offence.
Confession to Police officer not to be proved.

26. No confession made by any person whilst he is in the custody of a Police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.
Confession by accused while in custody of police not to be proved against him.

27. Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a Police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.
How much of information received from accused may be proved.

28. If such a confession as is referred to in section 24 is made after the impression caused by any such inducement, threat or promise has, in the opinion of the Court, been fully removed, it is relevant.
Confession made after removal of impression caused by inducement, threat or promise, relevant.

29. If such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him.
Confession otherwise relevant not to become irrelevant because of promise of secrecy, etc.

30. When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.
Consideration of proved confession affecting person making it and others jointly under trial for same offence.

EXPLANATION.—"Offence," as used in this section, includes the abetment of, or attempt to commit, the offence.

Illustrations.

(a) A and B are jointly tried for the murder of C. It is proved that A said—"B and I murdered C." The Court may consider the effect of this confession as against B.

(b) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said—"A and I murdered C."

This statement may not be taken into consideration by the Court against A, as B is not being jointly tried.

31. Admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provisions hereinafter contained.

Admission not conclusive proof, but may estop.

Statements by persons who cannot be called as Witnesses.

32. Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases:—

Case in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.

(1) When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

When it relates to cause of death;

Such statements are relevant whether the person who made them was or was not, at the time when they were made under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

(2) When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgement written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce written or signed by him; or of the date of a letter or other document usually dated, written or signed by him.

or is made in course of business;

(3) When the statement is against the pecuniary or ~~or against interest of~~ proprietary interest of the person making ~~maker;~~ it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages.

(4) When the statement gives the opinion of any such ~~or gives opinion as to~~ person, as to the existence of any public right or custom, on ~~public right or custom, on~~ right or custom or matter of public or ~~matters of general interest;~~ general interest, of the existence of which, if it existed he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter has arisen.

(5) When the statement relates to the existence of ~~or relates to existence of~~ any relationship by blood, marriage or ~~relationship.~~ adoption between persons as to whose relationship by blood, marriage or adoption the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

(6) When the statement relates to the existence of ~~or is made in will or deed~~ any relationship by blood, marriage or ~~relating to family affairs;~~ adoption between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait or other things on which such statements are usually made, and when such statement was made before the question in dispute was raised.

(7) When the statement is contained in any deed, will ~~or in document relating~~ or other document which relates to any ~~to transaction mentioned in~~ such transaction as is mentioned in section ~~section 13, clause (a);~~ 13, clause (a).

(8) When the statement was made by a number of ~~or is made by several~~ persons, and expressed feelings or impres- ~~persons and expresses fe-~~ sions on their part relevant to the matter ~~elings relevant to matter~~ in question. ~~in question.~~

Illustrations.

(a) The question is, whether A was murdered by B; or A dies of injuries received in a transaction in the course of which she was ravished. The question is whether she was ravished by B; or The question is, whether A was killed by B under such circumstances that a suit would lie against B by A's widow.

Statement made by A as to the cause of his or her death, referring respectively to the murder, the rape and the actionable wrong under consideration, are relevant facts.

(b) The question is as to the date of A's birth.

An entry in the diary of a deceased surgeon regularly kept in the course of business, stating that on a given day he attended A's mother and delivered her of a son, is a relevant fact.

(c) The question is, whether A was in Calcutta on a given day.

A statement in the diary of a deceased solicitor, regularly kept in the course of business, that on a given day the solicitor attended A at a place mentioned, in Calcutta, for the purpose of conferring with him upon specified business, is a relevant fact.

(d) The question is, whether rent was paid to A for certain land.

A letter from A's deceased agent to A saying that he had received the rent on A's account and held it at A's orders, is a relevant fact.

(e) The question is, whether A and B were legally married.

The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime is relevant.

(f) The question is, whether A, a person who cannot be found wrote a letter on a certain day. The fact that a letter written by him is dated on that day is relevant.

(g) The question is, whether a given road is a public way.

A statement by A, a deceased headman of the village, that the road was public, is a relevant fact.

(h) The question is, what was the price of grain on a certain day in a particular market. A statement of the price, made by a deceased Banya in the ordinary course of his business, is a relevant fact.

(i) The question is, whether A, who is dead, was the father of B.

A statement by A that B was his son, is a relevant fact.

(j) The question is, what was the date of the birth of A.

A letter from A's deceased father to a friend, announcing the birth of A on a given day, is a relevant fact.

(k) The question is, whether, and when, A and B were married.

An entry in a memorandum-book by C the deceased father of B, of his daughters' marriage with A on a given date, is a relevant fact.

(l) A sues B for a libel expressed in a painted caricature exposed in a shop window. The question is as to the similarity of the caricature and its libellous character. The remarks of a crowd of spectators on these points may be proved.

33. Evidence given by a witness in a judicial proceeding,

Relevancy of certain evidence for proving in subsequent proceeding, the truth of facts therein stated.

or before any persons authorised by law to take it is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable :

Provided—

that the proceeding was between the same parties or their representatives in interest ;

that the adverse party in the first proceeding had the right and opportunity to cross-examine ;

that the questions in issue were substantially the same in the first as in the second proceeding.

EXPLANATION.—A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

Statements made under Special Circumstances.

34. Entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

Entries in books of account when relevant.

Illustration.

A sues B for Rs. 1,000 and shows entries in his account books showing B to be indebted to him to this amount. The entries are relevant, but are not sufficient, without other evidence, to prove the debt.

35. An entry in any public or other official book, register or record, stating a fact in issue or relevant fact and made by a public servant in the discharge of his official duty or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record is kept, is itself a relevant fact.

Relevancy of entry in public record, made in performance of duty.

36. Statements of facts in issue or relevant facts, made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of Government as to matters usually represented or stated in such maps, charts or plans, are themselves relevant facts.

Relevancy of statements in maps, charts and plans.

37. When the Court has to form an opinion as to the existence of any fact of a public nature, any statement of it, made in a recital contained in any Act of Parliament, or in any Act or Regulation of any British Indian Administration or of the State or in a notification of the Government appearing in the Gazette of India, or in the Gazette of any British Local Government or of the State or in any printed paper purporting to be the London Gazette or the Government Gazette of any colony or possession of the Queen, is a relevant fact.

Relevancy of statement as to fact of public nature contained in certain Acts or notifications.

38. When the Court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published under the authority

Relevancy of statements as to any law contained in law-books.

of the Government of such country and to contain any such law, and any report of a ruling of the Courts of such country contained in a book purporting to be a report of such rulings, is relevant.

How much of a Statement is to be proved.

39. When any statement of which evidence is given forms part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, book or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made.

What evidence is to be given when statement forms part of a conversation, document, book or series of letters or papers.

Judgments of Courts of Justice when relevant.

40. The existence of any judgement, order or decree which by law prevents any Court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such Court ought to take cognizance of such suit or to hold such trial.

Previous judgments relevant to bar a second suit or trial.

41. A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial, insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order or decree is conclusive proof—
that any legal character which it confers accrued at the time when such judgment, order or decree came into operation ;

that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, order or decree declares it to have accrued to that person ;

that any legal character which it takes away from any such person ceased at the time from which such judgment,

Relevancy of certain judgments in probate, etc. jurisdiction.

order or decree declared that it had ceased or should cease ;

and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or decree declares that it had been or should be his property.

42. Judgments, orders or decrees other than those mentioned in section 41 are relevant if they relate to matters of a public nature relevant to the inquiry ; but such judgments, orders or decrees are not conclusive proof of that which they state.

Relevancy and effect of judgments, orders or decrees, other than those mentioned in section 41.

Illustration.

A sues B for trespass on his land. B alleges the existence of a public right-of-way over the land, which A denies.

The existence of a decree in favour of the defendant, in a suit by A against C for a trespass on the same land, in which C alleged the existence of the same right-of-way, is relevant, but it is not conclusive proof that the right of way exists.

43. Judgments, orders or decrees, other than those mentioned in sections 40, 41 and 42, are irrelevant, unless the existence of such judgment, order or decree is a fact in issue, or is relevant under some other provision of this Act.

Judgments, etc., other than those mentioned in sections 40 to 42, when relevant.

Illustrations.

(a) A and B separately sue C for a libel which reflects upon each of them. C in each case says that the matter alleged to be libellous is true, and the circumstances are such that it is probably true in each case, or in neither.

A obtains a decree against C for damages on the ground that C failed to make out his justification. The fact is irrelevant as between B and C.

(b) A prosecutes B for adultery with C, A's wife.

B denies that C is A's wife, but the Court convicts B of adultery.

Afterwards, C is prosecuted for bigamy in marrying B during A's lifetime. C says that she never was A's wife.

The judgment against B is irrelevant as against C.

(c) A prosecutes B for stealing a cow from him. B is convicted.

A afterwards sues C for the cow, which B had sold to him before his conviction. As between A and C, the judgment against B is irrelevant.

(d) A has obtained a decree for the possession of land against B. C, B's son, murders A in consequence.

The existence of the judgment is relevant, as showing motive for a crime.

(e) A is charged with theft and with having been previously convicted of theft. The previous conviction is relevant as a fact in issue.

(f) A is tried for the murder of B. The fact that B prosecuted A for libel and that A was convicted and sentenced is relevant under section 8 as showing the motive for the fact in issue.

44. Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under section 40, 41 or 42 and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion.

Fraud or collusion in obtaining judgment or incompetency of Court, may be proved.

Opinion of third Persons, when relevant

45. When the Court has to form an opinion upon a point of foreign law, or of science or art, or as to indentivity of handwriting or finger impressions the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to indentivity of handwriting or finger impressions are relevant facts.

Opinions of experts.

Such persons are called experts.

Illustrations.

(a) The question is, whether the death of A was caused by poison.

The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.

(b) The question is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.

The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

(c) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.

The opinions of expert on the question whether the two documents were written by the same person or by different persons, are relevant.

46. Facts, not otherwise relevant, or relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.

Facts bearing upon opinions of experts.

Illustrations.

(a) The question is, whether A was poisoned by a certain poison.

The fact that other persons, who were poisoned by that poison, exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison, is relevant.

(b) The question is, whether an obstruction to a harbour is caused by a certain sea-wall.

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The fact that other harbours similarly situated in other respects, but where there were no such sea-walls, began to be obstructed at about the same time, is relevant.

47. When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is relevant fact.

Opinion as to handwriting, when relevant.

EXPLANATION.—A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents, written by himself or under his authority and addressed to that person, or when in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

Illustration.

The question is, whether a given letter is in the handwriting of A, a merchant in London.

B is a merchant in Srinagar, who has written letters addressed to A and received letters purporting to be written by him. C is B's clerk, whose duty it was to examine and file B's correspondence. D is B's broker, to whom B habitually submitted the letters purporting to be written by A for the purpose of advising with him thereon.

The opinions of B, C and D on the question whether the letter is in the handwriting of A are relevant, though neither B, C nor D ever saw A write.

48. When the Court has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed are relevant.

Opinion as to existence of right or, custom when relevant.

EXPLANATION. The expression "general custom or right" includes customs or rights common to any considerable class of persons.

Illustration.

The right of the villagers of particular village to use the water of a particular well is a general right within the meaning of this section.

Opinion as to usages, tenets, etc., when relevant.

49. When the Court has to form an opinion as to—

the usages and tenets of any body of men or family,
the constitution and government of any religious or charitable foundation, or

the meaning of words or terms used in particular districts or by particular classes of people,

the opinions of persons having special means of knowledge thereon are relevant facts.

50. When the Court has to form an opinion as to the relationship of one person to another the opinion, expressed by conduct, as to the existence of such relationship, of any person who as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact:

Opinion on relationship when relevant.

Provided such opinion shall not be sufficient to prove a marriage in prosecutions under sections 371, 373 or 374 of the Ranbir Dand Bidhi.

Illustrations.

(a) The question is, whether A and B were married.

The fact that they were usually received and treated by their friends as husband and wife, is relevant.

(b) The question is, whether A was the legitimate son of B. The fact that A was always treated as such by members of the family, is relevant.

51. Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant.

Grounds of opinion when relevant.

Illustration.

Any expert may give an account of experiments performed by him for the purpose of forming his opinion.

Character when relevant.

52. In civil cases the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him is irrelevant, except in so far as such character appears from facts otherwise relevant.

In civil cases character to prove conduct imputed irrelevant.

53. In criminal proceedings the fact that the person accused is of a good character is relevant.

In criminal cases, previous good character relevant.

54. In criminal proceedings the fact that the accused person has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

Previous bad character not relevant except in reply.

EXPLANATION 1.—This section does not apply to cases in which the bad character of any person is itself a fact in issue.

¹Sections 494, 495, 497 or 498 of the Ranbir Penal Code.

EXPLANATION 2.—A previous conviction is relevant as evidence of bad character.

55. In civil cases the fact that the character of any person is such as to affect the amount of damages which he ought to receive, is relevant.

Character as affecting damages.

EXPLANATION.—In sections 52, 53, 54 and 55, the words “character” includes both reputation and disposition but, except as provided in section 54, evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition were shown.

PART II.

On Proof.

CHAPTER III.

FACTS WHICH NEED NOT BE PROVED.

56. No fact of which the Court will take judicial notice need be proved.

Fact judicially noticeable need not be proved.

57. The Court shall take judicial notice of the following facts—

Facts of which Court must take judicial notice.

(1) all laws or rules having the force of law now or heretofore in force, or hereafter to be in force, in any part of the State :

(2) all public Acts passed or hereafter to be passed by Parliament and all local and personal Acts directed by Parliament to be judicially noticed :

(3) Articles of war for Her Majesty's Army or Navy :

(4) the course of proceeding of Parliament and of the Councils for the purposes of making Laws and Regulations established under the Indian Councils Act, or any other law for the time being relating thereto.

EXPLANATION.—The word “Parliament” in clauses (2) and (4) includes

(i) the Parliament of the United Kingdom of Great Britain and Ireland ;

(ii) the Parliament of Great Britain.

(iii) the Parliament of England ;

- (iv) the Parliament of Scotland ; and
(v) the Parliament of Ireland ;

(5) the accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland ; the accession and the seal (or sign manual) of the Rulers of the State for the time being ;

(6) all seals of which English Courts take judicial notice : the seals of all Courts in the State, the seals of all the Courts of British India, and of all courts out of British India, established by the authority of the Governor General or any Local Government in Council : the seals of Courts of admiralty and Maritime Jurisdiction and of Notaries Public, and all seals which any person is authorised to use by any Act of Parliament or other Act or Regulation having the force of law in British India all seals which any person is authorised to use by any rule or enactment having the force of law in the State.

(7) the accession to office, names, titles, functions and signatures of the persons filling for the time being any public office in any part of British India, if the fact of their appointment to such office is notified in the Gazette of India or in the official Gazette of any Local Government : the accession to office, names, titles, functions and signatures of the persons filling for the time being any public office in any part of the State:

(8) the existence, title and national flag of every State or Sovereign recognized by the British Crown :

(9) the divisions of time, the geographical divisions of the world, and public festivals, fasts and holidays notified in the official Gazette :

(10) the territories under the dominion of the British Crown, the territories included in the State :

(11) the commencement, continuance and termination of hostilities between the British Crown and any other State or body of persons :

(12) the names of the members and officers of the Court and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates, attorneys, protectors, vakils, pleaders and other persons authorised by law to appear or act before it:

(13) the rule of the road on land or water.

In all these cases and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference.

If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

58. No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings :

Facts admitted need not be proved.

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

CHAPTER IV.

OF ORAL EVIDENCE.

59. All facts, except the contents of documents, may be proved by oral evidence.

Proof of facts by oral evidence.

60. Oral evidence must, in all cases whatever, be direct; that is to say—

Oral evidence must be direct.

if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it ;

if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;

if it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of witness who says he preceived it by that sense or in that manner;

if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds:

Provided that the opinions of experts expressed in any treatises commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable:

Provided also that, if oral evidence refers to the existence of condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

CHAPTER V.

OF DOCUMENTARY EVIDENCE.

61. The contents of documents may be proved either
Proof of contents of documents. by primary or by secondary evidence.

62. Primary evidence means the document itself produced
Primary evidence. for the inspection of the Court.

EXPLANATION 1.—Where a document is executed in several parts, each part is primary evidence of the document.

Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

EXPLANATION 2.—Where a number of documents are all made by one uniform process, as in the case of printing, lithography, or photography, each is primary evidence of the contents of the rest; but where they are all copies of a common original, they are not primary evidence of the contents of the original.

Illustration.

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

Secondary evidence. **63.** Secondary evidence means and includes—

(1) certified copies given under the provisions hereinafter contained;

(2) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies;

(3) copies made from or compared with original

(4) counterparts of documents as against the parties who did not execute them;

(5) oral accounts of the contents of a document given by some person who has himself seen it.

Illustrations.

(a) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

(b) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.

(c) A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence; but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.

(d) Neither an oral account of a copy compared with the original, nor an oral account of a photograph or machine-copy of the original, is secondary evidence of the original.

64. Documents must be proved by primary evidence except in the cases hereinafter mentioned.

Proof of documents by primary evidence.

65. Secondary evidence may be given of the existence, condition or contents of document in the following cases:—

Cases in which secondary evidence relating to documents may be given

(a) when the original is shown or appears to be in the possession or power—

of the person against whom the document is sought to be proved, or

of any person out of reach of, or not subject to, the process of the Court, or

of any person legally bound to produce it,

and when, after the notice mentioned in section 66, such person does not produce it,

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d) when the original is of such a nature as not to be easily moveable;

(e) when the original is a public document within the meaning of section 74;

(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in the State, to be given in evidence;

(g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (a), (c) and (d) any secondary evidence of the contents of the document is admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

66. Secondary evidence of the contents of the documents referred to in section 65, clause (a), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is or to his attorney, or pleader, such notice to produce it as is prescribed by law; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case:

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it:—

- (1) when the document to be proved is itself a notice;
- (2) when, from the nature of the case, the adverse party must know that he will be required to produce it;
- (3) when it appears or is proved that the adverse party has obtained possession of the original by fraud or force;
- (4) when the adverse party or his agent has the original in Court;
- (5) when the adverse party or his agent has admitted the loss of the document;
- (6) when the person in possession of the document is out of reach of, or not subject to, the process of the Court.

67. If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as it alleged to be in that person's handwriting must be proved to be in his handwriting.

68. If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution and has been examined as a witness if there be an attesting witness alive and subject to the process of the Court and capable of giving evidence.

¹ [Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Registration Act 1977, unless its execution by the person by whom it purports to have been executed is

¹ Proviso to section 68 added by Regulation 1 of 1983, Notification 2-L/88 published in Government Gazette dated 18th Mar 1983.

specifically denied.]

EXPLANATION.—The expression “attest” with its grammatical variations in this section and in sections 69 to 77, both inclusive, and sections 89 and 90 means *attest* with its grammatical variations as provided by section 59 of the Transfer of Property Act. ✓

69. If no such attesting witness can be found, or if the document purports to have been executed out of the State, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the persons executing the document is in the handwriting of that person.

Proof where no attesting witness found.

70. The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.

Admission of execution by party to attested document.

71. If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.

Proof when attesting witness denies the execution.

72. An attested document not required by law to be attested may be proved as if it was unattested. ✓

Proof of document not required by law to be attested.

73. In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.

Comparison of signature, writing or seal with others admitted or proved.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

This section applies also, with any necessary modifications to finger-impression.

Public Documents.

Public documents.

74. The following documents are public documents:—

(1) documents forming the acts or records of the

acts—

- (i) of the sovereign authority,
- (ii) of official bodies and tribunals, and
- (iii) of public officers, legislative, judicial and executive, whether of the State or of British India, or of any other part of His Majesty's dominions, or of a foreign country;

(2) public records kept in the State of private documents.

Private documents.

75. All other documents are private.

76. Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be and such certificates shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorised by law to make use of a seal, and such copies so certified shall be called certified copies.

EXPLANATION.—Any officer who, by the ordinary course of official duty, is authorised to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

77. Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

Proof of documents by production of certified copies.

Proof of other official documents

78. The following public documents may be proved as follows:—

(1) Acts, Regulations, orders or notifications of the Executive Government of the State or of British India in any of its departments, or of any British Indian Local Government or any department of any British Indian Local Government,—

by the records of the departments, certified by the heads of those departments respectively, or by any document purporting to be printed by order of any such Government:

(2) The proceedings of the Legislatures,—
by the journals of those bodies respectively, by published Acts, Regulations or abstracts or by copies purporting to be printed by order of Government:

(3) Proclamations, orders or regulations issued by His Highness, or His Majesty or by the Privy Council, or by any

department of His Majesty's or His Highness' Government,—
by copies or extracts contained in the London Gazette,
or purporting to be printed by the King's
Printer, or in the Jammu and Kashmir Govern-
ment Gazette:

(4) The Acts, Regulations of the Executive or the
proceedings of the Legislature of a foreign country,—

by journals published by their authority, or commonly
received in that country as such, or by a copy
certified under the seal of the country or sovereign
or by a recognition thereof in some public Act of
the Governor General of India in Council.

(5) The proceedings of a municipal body in the State or
British India,—

by a copy of such proceedings, certified by the legal
keeper thereof, or by a printed book purporting
to be published by the authority of such body:

(6) Public documents of any other class in a foreign
country,—

by the original, or by a copy certified by the legal
keeper thereof, with a certificate under the seal of
a notary public, or of a British Consul or diplo-
matic agent, that the copy is duly certified by
the officer having the legal custody of the original,
and upon proof of the character of the document
according to the law of the foreign country.

Presumptions as to Documents.

79. The Court shall presume every document purporting
to be a certificate, certified copy or other
document, which is by law declared to be
admissible as evidence of any particular
fact and which purports to be duly certified by an officer of the
State, by any officer in British India, or by any officer in any
Native State in alliance with His Majesty, who is duly
authorised thereto by the Governor General in Council, to be
genuine:

Provided that such document is substantially in the form
and purports to be executed in the manner directed by law in
that behalf.

The Court shall also presume that any officer by whom
any such document purports to be signed or certified, held,
when he signed it, the official character which he claims in
such paper.

80. Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorised by law to take such evidence or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume—

that the document is genuine; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true; and that such evidence, statement or confession was duly taken.

81. The Court shall presume the genuineness of every document purporting to be the Jammu and Kashmir Government Gazette, the London Gazette or the Gazette of India, or the Government Gazette of any British Indian Local Government, or of any colony, dependency or possession of the British Crown or to be a newspaper or journal, or to be a copy of a private Act of Parliament printed by the Kings Printer, or of Regulation printed in the Jammu and Kashmir Government Gazette and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody.

82. When any document is produced before any Court, purporting to be a document which, by the law in force for the time being in England and Ireland, or British India would be admissible in proof of any particular in any Court of justice in England or Ireland or British India without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the Court shall presume that such seal, stamp or signature, is genuine and that the person signing it held, at the time when he signed it, the judicial or official character which he claims, and the document shall be admissible for the same purpose for which it would be admissible in England or Ireland, or British India.

83. The Court shall presume that maps or plans purporting to be made by the authority of Government were so made, and are accurate; but maps or plans made for the purposes of any cause must be proved to be accurate.

84. The Court shall presume the genuineness of every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the

Presumption as to collections of laws and reports of decisions.

laws of that country,

and of every book purporting to contain reports of decisions of the Courts of such country.

85. The Court shall presume that every document purporting to be a power of attorney, and to have been executed before and authenticated by a notary public, or any Court, Judge, Magistrate, British Consul or Vice-Consul, or representative of His Majesty, or of the Government of India, was so executed and authenticated.

Presumption as to powers of attorney.

86. The Court may presume that any document purporting to be a certified copy of any judicial record of any country not forming part of His Majesty's dominions is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of His Majesty or of the Government of India in or for such country to be the manner commonly in use in that country for the certification of copies of judicial records.

Presumption as to certified copies of foreign judicial records.

An officer who, with respect to any territory or place not forming part of His Majesty's dominions, is a Political Agent therefor, as defined in section 3, clause (40), of the General Clauses Act shall for the purposes of this section, be deemed to be a representative of the Government of India in and for the country comprising that territory or place.

87. The Court may presume that any book to which it may refer for information on matters of public or general interest, and that any published map or chart, the statements of which are relevant facts and which is produced for its inspection, was written and published by the person and at the time and place, by whom or at which it purports to have been written or published.

Presumption as to books, maps and charts.

88. The Court may presume that a message, forwarded from a telegraph office to the person to whom such message purports to be addressed, corresponds with a message delivered for transmission at the office from which the message purports to be sent; but the Court shall not make any presumption as to the person by whom such message was delivered for transmission.

Presumption as to telegraphic messages.

89. The Court shall presume that every document, called for and not produced after notice to produce, was attested, stamped and executed in the manner required by law.

Presumption as to due execution, etc., of documents not produced.

90. Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Explanation.—Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

This explanation applies also to section 81.

Illustrations.

(a) A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land, showing his titles to it. The custody is proper.

(b) A produces deeds relating to landed property of which he is the mortgagee. The mortgagor is in possession. The custody is proper.

(c) A, a connection of B, produces deeds relating to lands in B's possession which were deposited with him by B for safe custody. The custody is proper.

CHAPTER VI.

OF THE EXCLUSION OF ORAL BY DOCUMENTARY EVIDENCE.

91. When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the term of such contract, grant or other disposition of property, or of such matter except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

EXCEPTION 1.—When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

EXCEPTION 2.—Will admitted to probate in British India or the State may be proved by the probate.

EXPLANATION 1.—This section applies equally to cases in which the contracts, grant or dispositions of property referred to are contained in one document and to cases in which they are contained in more documents than one.

EXPLANATION 2.—Where there are more originals than one, one original only need be proved.

EXPLANATION 3.—The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

Illustrations.

(a) If a contract be contained in several letters, all the letters in which it is contained must be proved.

(b) If a contract is contained in a bill of exchange, the bill of exchange must be proved.

(c) If a bill of exchange is drawn in a set of three, one only need be proved.

(d) A contracts, in writing, with B, for the delivery of indigo upon certain terms. The contract mentions the fact that B had paid A the price of other indigo contracted for verbally on another occasion.

Oral evidence is offered that no payment was made for the other indigo. The evidence is admissible.

(e) A gives B a receipt for money paid by B.

Oral evidence is offered of the payment.

The evidence is admissible.

92. When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument of their representatives in interest, for the purpose of contradicting, varying, adding to or subtracting from, its terms.

PROVISO (1).—Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law.

PROVISO (2).—The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

PROVISO (3) The existence of any separate oral agreement, constituting a condition precedent to the attaching of any

obligation under any such contract, grant or disposition of property, may be proved.

PROVISO (4).—The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

PROVISO (5).—Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved :

Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

PROVISO (6).—Any fact may be proved which shows in what manner the language of a document is related to existing facts.

Illustrations.

(a) Omitted.

(b) A agrees absolutely in writing to pay B Rs. 1,000 on the 1st March, 1873. The fact that at the same time an oral agreement was made that the money should not be paid till the thirty-first March cannot be proved.

(c) An estate called "the Rampure tea estate" is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate and was meant to pass by the deed cannot be proved.

(d) A enters into a written contract with B to work certain mines, the property of B upon certain terms. A was induced to do so by a misrepresentation of B's as to their value. This fact may be proved.

(e) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law entitle him to have the contract reformed.

(f) A orders goods of B by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. B sues A for the price. A may show that goods were supplied on credit for a term still unexpired.

(g) A sells B a horse and verbally warrants him sound. A gives B a paper in these words : "Bought of A, a horse for Rs. 500." B may prove the verbal warranty.

(h) A hires lodgings of B, and gives B a card on which is written—"Rooms Rs. 200 a month." A may prove a verbal agreement that these terms were to include partial board.

A hires lodgings of B for a year, and a regularly stamped agreement, drawn up by an attorney, is made between them. It is silent on the subject of board. A may not prove that board was included in the term verbally.

(i) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt and does not send the money. In a suit for the amount A may prove this.

(j) A and B make a contract in writing to take effect upon the happening

of a certain contingency. The writing is left with B, who sues A upon it. A may show the circumstances under which it was delivered.

93. When the language used in a document is, on its face, ambiguous or defective, evidence may not be given of facts which would show its meaning or supply its defects.

Exclusion of evidence to explain or amend ambiguous documents.

Illustrations.

(a) A agrees, in writing, to sell a horse to B for Rs. 1,000 or Rs. 1,500.

Evidence cannot be given to show which price was to be given.

(b) A deed contains blanks. Evidence cannot be given of facts which would show how they were meant to be filled.

94. When language used in a document is plain in itself, and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.

Exclusion of evidence against application of document to existing facts.

Illustrations.

A sells to B by deed, "my estate at Rampur containing 100 Bighas". A has an estate at Rampur containing 100 Bighas. Evidence may not be given of the fact that the estate meant to be sold was one situated at a different place and of a different size.

95. When language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

Evidence as to document unmeaning in reference to existing facts.

Illustration.

A sells to B, by deed, "my house in Calcutta".

A had no house in Calcutta, but it appears that he had a house at Howrah, of which B had been in possession since the execution of the deed.

These facts may be proved to show that the deed related to the house at Howrah.

96. When the facts are such that the language used might have been meant to apply to one, and could not have been meant to apply to more than one, of several persons or things, evidence may be given of facts which show which of those persons or things it was intended to apply to.

Evidence as to application of language which can apply to one only of several persons.

Illustrations.

(a) A agrees to sell to B for Rs. 1,000, "my white horse". A has two white horses. Evidence may be given of facts which show which of them was meant.

(b) A agrees to accompany B to Rampur. Evidence may be given of facts showing whether Rampur in the Rajouri or Rampur in Baramulla was meant.

97. When the language used applies partly to one set of existing facts, and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply.

Evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies.

Illustration

A agrees to sell to B, "my land at X in the occupation of Y". A has land at X, but not in the occupation of Y, and he has land in the occupation of Y, but it is not at X. Evidence may be given of facts showing which he meant to sell.

98. Evidence may be given to show the meaning of illegible or not, commonly intelligible characters of foreign, obsolete, technical, local and provincial expressions, of abbreviation and words used in a peculiar sense.

Evidence as to meaning of illegible characters, etc.

Illustration.

A, a sculptor, agrees to sell to B, "all my mods". A has both models and modelling tools. Evidence may be given to show which he meant to sell.

99. Persons who are not parties to a document, or their representatives in interest, may give evidence of any facts tending to show a contemporaneous agreement varying the terms of the document.

Who may give evidence of agreement varying terms of document.

Illustration.

A and B make a contract in writing that B shall sell A certain cotton, to be paid for on delivery. At the same time they make an oral agreement that three months credit shall be given to A. This could not be shown as between A and B but it might be shown by C, if it affected his interests.

100. Omit.

PART III.

Production and Effect of Evidence.

CHAPTER VII.

OF THE BURDEN OF PROOF.

101. Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

Burden of proof

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Illustrations.

(a) A desires a Court to give judgement that B shall be punished for crime which A says B has committed.

A must prove that B has committed the crime.

(b) A desires a Court to give judgement that he is entitled to certain land in the possession of B, by reason of facts which he asserts, and which B, denies, to be true.

A must prove the existence of these facts.

102. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

On whom burden of proof lies.

Illustrations.

(a) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father.

If no evidence were given on either side, B would be entitled to retain his possession.

Therefore the burden of proof is on A.

(b) A sues B for money due on a bond.

The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies.

If no evidence were given on either side, A would succeed as the bond is not disputed and the fraud is not proved.

Therefore the burden of proof is on B.

103. The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Burden of proof as to particular fact.

Illustrations.

(a) A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C. A must prove the admission.

B wishes the Court to believe that, at the time in question he was elsewhere. He must prove it.

104. The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

Burden of proving fact to be proved to make evidence admissible.

Illustration.

(a) A wishes to prove a dying declaration by B. A must prove B's death.

(b) A wishes to prove, by secondary evidence, the contents of a lost document.

A must prove that the document has been lost.

105. When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the ¹Ranbir Dand Bidhi or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

Burden of proving that case of accused comes within exceptions.

Illustrations.

(a) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act.

The burden of proof is on A.

(b) A, accused of murder, alleges that, by grave and sudden provocation he was deprived of the power of self control.

The burden of proof is on A.

(c) ¹Section 245 of the Ranbir Dand Bidhi provides that whoever, except in the case provided for by ²section 250 voluntarily causes grievous hurt, shall be subject to certain punishments.

A is charged with voluntarily causing grievous hurt under section 245.

The burden of proving the circumstances bringing the case under ²section 250 lies on A.

106. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Burden of proving fact especially within knowledge

Illustrations.

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with traveling on a railway with out a ticket. The burden of proving that he had a ticket is on him.

107. When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

Burden of proving death of person known to have been alive within thirty years.

108. Provided that when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.

Burden of proving that person is alive who has not been heard of for seven years.

¹Section 325 Ranbir Penal Code.

²Section 334 Ranbir Penal Code.

109. When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships respectively, is on the person who affirms it.

Burden of proof as to relationship in the cases of partners, landlord and tenant, principal and agent.

110. When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

Burden of proof as to ownership.

111. Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

Proof of good faith in transactions where one party is in relation of active confidence.

Illustrations.

(a) The good faith of a sale by a client to an attorney is in question in a suit brought by the client. The burden of proving the good faith of the transaction is on the attorney.

(b) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son. The burden of proving the good faith of the transaction is on the father.

112. The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

Birth during marriage conclusive proof of legitimacy.

113. A notification in the Gazette of India that any portion of British territory has been ceded to any Native State, Prince or Ruler, shall be conclusive proof that a valid cession of such territory took place at the date mentioned in such notification.

Proof of cession of territory.

114. The Court may presume the existence of any fact which it thinks likely to have happened regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Court may presume existence of certain facts.

Illustrations.

The Court may presume—

(a) that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession;

(b) that an accomplice is unworthy of credit, unless he is corroborated in material particulars;

(c) that a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration;

(d) that a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or states of things usually cease to exist, is still in existence;

(e) that judicial and official acts have been regularly performed;

(f) that the common course of business has been followed in particular cases;

(g) that evidence which could be and is not produced would, if produced be unfavourable to the person who withholds it;

(h) that, if a man refuses to answer a question which he is not compelled, to answer by law, the answer, if given, would be unfavourable to him;

(i) that when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it :—

as to *Illustration (a)*—a shop-keeper has in his till a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business:

as to *Illustration (b)*—A, a person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery. B, a person of equally good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself :

as to *Illustration (c)*—a crime is committed by several persons. A, B and C, three of the criminals, are captured on the spot and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable :

as to *Illustration (e)*—A, the drawer of a bill of exchange, was a man of business. B, the acceptor, was a young and ignorant person, completely under A's influence :

as to *Illustration (d)*—it is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course :

as to *Illustration (f)*—a judicial act, the regularity of which is in question, was performed under exceptional circumstances :

as to *Illustration (g)*—the question is, whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances :

as to *Illustration (h)*—a man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feelings and reputation of his family.

as to *Illustration (i)*—a man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked :

as to *Illustration. (i)*—a bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it.

CHAPTER VIII.

ESTOPPEL.

115. When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

Illustration.

A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it.

The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title.

116. No tenant of immoveable property, or person claiming through such tenant, shall during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title of such immoveable property; and no person who came upon any immoveable property by the licence of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such licence was given.

117. No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it; nor shall any bailee or licensee be permitted to deny that his bailor or licensor had, at the time when the bailment or licence commenced, authority to make such bailment or grant such licence.

EXPLANATION (1).—The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

EXPLANATION (2).—If a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor.

CHAPTER IX.

OF WITNESSES.

118. All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

Who may testify. **EXPLANATION.**—A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.

119. A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidence.

Parties to civil suit, and their wives or husbands. Husband or wife of person under criminal trial. **120.** In all Civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses. In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness.

Judges and Magistrates. **121.** No Judge or Magistrate shall, except upon the special order of some Court to which he is subordinate, be compelled to answer any questions as to his own conduct in Court as such Judge or Magistrate, or as to anything which came to his knowledge in Court as such Judge or Magistrate; but he may be examined as to other matters which occurred in his presence whilst he was so acting.

Illustrations.

(a) A, on his trial before the Court of Session, says that a deposition was improperly taken by B, the Magistrate. B cannot be compelled to answer questions as to this, except upon the special order of a superior Court.

(b) A is accused before the Court of Session of having given false evidence before B, a Magistrate. B cannot be asked what A said, except upon the special order of the superior Court.

(c) A is accused before the Court of Session of attempting to murder a Police officer whilst on his trial before B, a Sessions Judge. B may be examined as to what occurred.

Communications during marriage. **122.** No person who is or has been married shall be compelled to disclose any communication made to him during marriage by any person

to whom he is or has been married ; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.

123. No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

124. No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

125. No Magistrate or Police officer shall be compelled to say whence he got any information as to the commission of any offence ; and no Revenue officer shall be compelled to say whence he got any information as to the commission of any offence against the public revenues.

EXPLANATION.—“Revenue officer” in this section means any officer employed in or about the business of any branch of the public revenue.

126. No barrister, attorney, pleader or vakil shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him, to his client in the course and for the purpose of such employment :

Provided that nothing in this section shall protect from disclosure—

(1) any such communication made in furtherance of any illegal purpose ;

(2) any fact observed by any barrister, pleader, attorney and vakil, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

It is immaterial whether the attention of such barrister, pleader, attorney or vakil was or was not directed to such fact by or on behalf of his client.

EXPLANATION.—The obligation stated in this section continues after the employment has ceased.

Illustrations.

(a) A, a client, says to B, an attorney—"I have committed forgery and I wish you to defend me."

As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.

(b) A, a client says to B, an attorney—"I wish to obtain possession of property by the use of a forged deed on which I request you to sue."

The communication, being made in furtherance of a criminal purpose, is not protected from disclosure.

(c) A, being charged with embezzlement, retains B, an attorney, to defend him. In the course of the proceedings, B observes that an entry has been made in A's account book, charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of his employment.

This being a fact observed by B in the course of his employment, showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure.

127. The provisions of section 126 shall apply to interpreters, and the clerks or servants of barristers, pleaders, attorneys and vakils.

Section 126 to apply to interpreters, etc.

128. If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in section 126; and, if any party to a suit or proceeding calls any such barrister, pleader, attorney or vakil as a witness, he shall be deemed to have consented to such disclosure only if he questions such barrister, attorney or vakil on matters which, but for such question, he would not be at liberty to disclose.

Privilege not waived by volunteering evidence.

129. No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional advisor, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others.

Confidential communications with legal advisors.

130. No witness who is not a party to a suit shall be compelled to produce his title-deeds to any property or any document in virtue of which he holds any property as pledgee or mortgagee or any document the production of which might tend to criminate him unless he has agreed in writing to produce them with the person seeking the production of such deeds or some person through whom the claims.

Production of title-deeds of witness not a party.

131. No one shall be compelled to produce documents in his possession, which any other person would be entitled to refuse to produce if they were in his possession, unless such last mentioned person consents to their production.

Production of documents which another person having possession could refuse to produce.

132. A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind :

Witness not excused from answering on ground that answer will criminate.

Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.

Proviso.

133. An accomplice shall be competent witness against an accused person ; and conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice .

Accomplice.

134. No particular number of witnesses shall in any case be required for the proof of any fact.

Number of witnesses.

CHAPTER X.

OF THE EXAMINATION OF WITNESSES.

135. The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court.

Order of production and examination of witnesses.

136. When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant ; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant and not otherwise.

Judge to decide as to admissibility of evidence.

If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other facts, such last-

mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact, and the Court is satisfied with such undertaking.

If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

Illustrations.

(a) It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under section 32.

The fact that the person is dead must be proved by the person proposing to prove the statement, before evidence is given of the statement.

(b) It is proposed to prove, by a copy, the contents of a document said to be lost.

The fact that the original is lost must be proved by the person proposing to produce the copy, before the copy is produced.

(c) A is accused of receiving stolen property knowing it to have been stolen.

It is proposed to prove that he denied the possession of the property.

The relevancy of the denial depends on the identity of the property. The Court may, in its discretion, either require the property to be identified before the denial of the possession is proved, or permit the denial of possession to be proved, before the property is identified.

(d) It is proposed to prove a fact (A) which is said to have been the cause or effect of a fact in issue. There are several intermediate facts (B, C and D) which must be shown to exist before the fact (A) can be regarded as the cause or effect of the fact in issue. The Court may either permit A to be proved, before B, C and D is proved, or may require proof of B, C and D before permitting proof of A.

137. The examination of a witness by the party who

Examination-in-chief.

calls him shall be called his examination-in-chief.

The examination of a witness by the adverse party shall be called his cross-examination.

Cross-examination.

The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination.

Re-examination.

138. Witness shall be at first examined-in-chief then

Order of examinations.

(if the adverse party so desires) cross-examined, then (if the party calling him so

desires) re-examined.

The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

The re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

139. A person summoned to produce a document does not become a witness by the mere fact that he produces it and cannot be cross-examined unless and until he is called as a witness.

140. Witnesses to character may be cross-examined and re-examined.

141. Any question suggesting the answer which the person putting it wishes or expects to receive is called a leading question.

142. Leading question must not, if objected to by the adverse party, be asked in an examination-in-chief, or in a re-examination, except with the permission of the Court.

The Court shall permit leading questions as to matter which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

143. Leading questions may be asked in cross-examination.

144. Any witness may be asked, whilst under examination, whether any contract, or other disposition of property as to which he is giving evidence, was not contained in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document, which, in the opinion of the Court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitled the party, who called the witness to secondary evidence of it.

EXPLANATION.—A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts.

Illustrations.

The question is, whether A assaulted B.

C deposes that he heard A say to D—"B wrote a letter accusing me of theft, and I will be revenged on him." This statement is relevant, as showing A's motive for the assault, and evidence may be given of it, though no other evidence is given about the letter.

145. A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved ; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

146. When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to be asked any questions which tend—

- Cross-examination as to previous statements in writing.*
- (1) to test his veracity.
 - (2) to discover who he is and what is his position in life, or
 - (3) to shake his credit, by injuring his character although the answer to such questions might tend directly or indirectly to criminate him or might expose or tend directly or indirectly to expose him to penalty or forfeiture.

147. If any such question relates to a matter relevant to the suit or proceeding, the provisions of section 132 shall apply thereto.

148. If any such question relates to a matter not relevant to the suit or proceeding, except in so far as it effects the credit of the witness by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it. In exercising its discretion, the Court shall have regard to the following considerations :—

Questions lawful in cross-examination.

- (1) such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies :

(2) such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the Court as to the credibility of the witness on the matter to which he testifies :

(3) such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence :

(4) the Court may, if it sees fit, draw, from the witness, refusal to answer, the inference that the answer if given would be unfavourable.

Court to decide when question asked and when witness compelled to answer.

149. No such question as is referred to in section 148 ought to be asked, unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well-founded.

Question not to be asked without reasonable grounds.

Illustrations.

(a) A barrister is instructed by an attorney or vakil that an important witness is a dakait. This is a reasonable ground for asking the witness whether he is a dakait.

(b) A pleader is informed by a person in Court that an important witness is a dakait; the informant, on being questioned by the pleader, gives satisfactory reasons for his statement. This is a reasonable ground for asking the witness whether he is a dakait.

(c) A witness, of whom nothing whatever is known, is asked at random whether he is a dakait. There are here no reasonable grounds for the question.

(d) A witness, of whom nothing whatever is known, being questioned as to his mode of life and means of living, gives unsatisfactory answers. This may be a reasonable ground for asking him if he is a dakait.

150. If the Court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any barrister, pleader, or vakil, report the circumstances of the case to the High Court.

Procedure of Court in case of question being asked without reasonable grounds.

151. The Court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the Court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

Indecent and scandalous questions.

152. The Court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the Court needlessly offensive in form.

Questions intended to insult or annoy.

153. When a witness has been asked and has answered any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him; but, if he answers falsely, he may afterwards be charged with giving false evidence.

Exclusions of evidence to contradict answers to questions testing veracity.

EXCEPTION 1 If a witness is asked whether he has been previously convicted of any crime and denies it, evidence may be given of his previous conviction.

EXCEPTION 2.—If a witness is asked any question tending to impeach his impartiality and answers it by denying the facts suggested, he may be contradicted.

Illustrations.

(a) A claim against an underwriter is resisted on the ground of fraud.

The claimant is asked whether, in a former transaction he had not made a fraudulent claim. He denies it.

Evidence is offered to show that he did make such a claim.

The evidence is inadmissible.

(b) A witness is asked whether he was not dismissed from a situation for dishonesty. He denies it.

Evidence is offered to show that he was dismissed for dishonesty.

The evidence is not admissible.

(c) A affirms that on a certain day he saw B at Jammu. A is asked whether he himself was not on that day at Srinagar. He denies it.

Evidence is offered to show that A was on that day at Srinagar.

The evidence is admissible, not as contradicting A on a fact which affects his credit, but as contradicting the alleged fact that B was seen on the day in question in Jammu.

In each of these cases the witness might, if his denial was false, be charged with giving false evidence.

(d) A is asked whether his family has not had a blood-feud with the family of B against whom he gives evidence.

He denies it. He may be contradicted on the ground that the question tends to impeach his impartiality.

154. The Court may, in its discretion, permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party.

Question by party to his own witness.

155. The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him:—

Impeaching credit of witness.

(1) by the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;

(2) by proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence;

(3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;

(4) when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.

EXPLANATION.—A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

Illustrations.

(a) A sues B for the price of goods sold and delivered to B. C says that A delivered the goods to B.

Evidence is offered to show that, on a previous occasion he said that he had not delivered the goods to B.

The evidence is admissible.

(b) A is indicted for the murder of B.

C says that B, when dying declared that A had given B the wound of which he died.

Evidence is offered to show that, on a previous occasion, C said that the wound was not given by A or in his presence.

The evidence is admissible.

156. When a witness whom it is intended to corroborate gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the Court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies.

Questions tending to corroborate evidence of relevant fact admissible.

Illustration.

A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed.

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

157. In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact may be proved.

Former statements of witness may be proved to corroborate later testimony as to same fact.

158. Whenever any statement, relevant under section 32 or 33, is proved, all matters may be proved either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness and had denied upon cross-examination the truth of the matters suggested.

159. A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at the time fresh in his memory.

Refreshing memory.

The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read he knew it to be correct.

Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such document :

When witness may use copy of document to refresh memory

Provided the Court be satisfied that there is sufficient reason for the non-production of the original.

An expert may refresh his memory by reference to professional treatises.

160. A witness may also testify to facts mentioned in any such document as is mentioned in section 159, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

Testimony to facts stated in document mentioned in section 159.

Illustration.

A book-keeper may testify to facts recorded by him in books regularly kept in the course of business, if he knows that the books were correctly kept, although he has forgotten the particular transactions entered

161. Any writing referred to under the provisions of the two last preceding sections must be produced and shown to the adverse party if he requires it. such party may, if he pleases, cross-examine the witness thereupon.

Right of adverse party as to writing used to refresh memory.

162. A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or its admissibility. The validity of any such objection shall be decided on by the Court.

Production of documents.

The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence, and : if the interpreter disobeys such direction, he shall be held to have committed an offence under 'section 130 of the Randir Dund Bidhi.

Translation of document.

163. When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so.

Giving, as evidence, of document called for and produced on notice.

164. When a party refuses to produce a document which he has had notice to produce he cannot afterwards use the document as evidence without the consent of the other party or the order of the Court.

Using as evidence, of document production of which was refused on notice.

Illustration.

A sues B on an agreement and gives B notice to produce it. At the trial A calls for the document and B refuses to produce it. A gives secondary evidence of its contents. B seeks to produce the document itself to contradict the secondary evidence given by A, or in order to show that the agreement is not stamped. He cannot do so.

165. The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant, and may order the production of any document or thing : and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question :

Judge's power to put questions or order production.

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved.

• Provided also that this section shall not authorise any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the question were asked or the document were called for by the adverse party ; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149 ; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

166. In cases tried with assessors, assessors may put any questions to the witnesses, through or by leave of the Judge, which the Judge himself might put and which he considers proper.

Power of assessors to put question.

CHAPTER XI.

OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE.

167. The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

No new trial for improper admission or rejection of evidence.

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THE EASEMENTS ACT, 1977.

Act No. XIV of 1977.

[Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No 8372, dated 11th September, 1920 and State Council Resolution No. 1, dated 8th April, 1925, (Notification No 14-L/81).]

An Act to define and amend the law relating to Easements and Licences.

Whereas it is expedient to define and amend the law relating to Easements and Licences; It is hereby enacted as follows:—

Preamble.

PRELIMINARY.

1. Omitted.

2. Nothing herein contained shall be deemed to affect any law not hereby expressly repealed; or to derogate from—

Savings

(a) any right of the Government to regulate the collection, retention and distribution of the water of rivers and streams flowing in natural channels, and of natural lakes and ponds, or of the water flowing, collected, retained or distributed in

Short title, extent and commencement are given and regulated by Act IV of 1977.

// or by any channel or other work constructed at the public expense for irrigation ;

(b) any customary or other right (not being a licence) in or over immoveable property which the Government, the public or any other person may possess irrespective of other immoveable property ; or

(c) any right acquired, or arising out of a relation created, before this Act comes into force.

3. Omitted.

CHAPTER I.

OF EASEMENTS GENERALLY.

4. An easement is a right which the owner or occupier of certain land possesses, as such, for the beneficial enjoyment of that land, to do and continue to do something, or to prevent and continue to prevent something being done, in or upon, or in respect of, certain other land not his own.

“Easement” defined. The land for the beneficial enjoyment of which the right exists, is called the dominant heritage, and the owner or occupier thereof the dominant owner ; the land on which the liability is imposed is called the servient heritage, and the owner or occupier thereof the servient owner.

EXPLANATION.—In the first and second clauses of this section, the expression “ land ” includes also things permanently attached to the earth ; the expression “ beneficial enjoyment ” includes also possible convenience, remote advantage, and even a mere amenity ; and the expression “ to do something ” includes removal and appropriation by the dominant owner for the beneficial enjoyment of the dominant heritage, of any part of the soil or the servient heritage or anything growing or subsisting thereon.

Illustrations.

(a) A, as the owner of a certain house, has a right of way thither over his neighbour B’s land for purposes connected with the beneficial enjoyment of the house. This is an easement.

(b) A, as the owner of a certain house, has the right to go on his neighbour B’s land, and to take water for the purposes of his household out of a spring therein. This is an easement.

(c) A, as the owner of a certain house has the right to conduct water from B’s stream to supply the fountains in the garden attached to the house. This is an easement.

(d) A, as the owner of a certain house and farm, has the right to graze a certain number of his own cattle on B's field or to take for the purpose of being used in the house, by himself, his family, guests, lodgers and servants, water, or fish out of C's tank, or timber out of D's wood, or to use, for the purpose of manuring, his land, the leaves which have fallen from the trees on E's land. These are easements.

(e) A dedicates to the public the right to occupy the surface of certain land for the purpose of passing and re-passing. This right is not an easement.

(f) A is bound to cleanse a watercourse running through his land and keep it free from obstruction for the benefit of B, a lower riparian owner. This is not an easement.

5. Easements are either continuous or discontinuous,
Continuous & discontinuous apparent and non-apparent easements. apparent or non-apparent.

A continuous easement is one whose enjoyment is, or may be, continual without the act of man.

A discontinuous easement is one that needs the act of man for its enjoyment.

An apparent easement is one the existence of which is shown by some permanent sign which, upon careful inspection by a competent person, would be visible to him.

A non-apparent easement is one that has no such sign.

Illustrations.

(a) A right annexed to B's house to receive light by the windows without obstruction by his neighbour A. This is a continuous easement.

(b) A right of way annexed to A's house over B's land. This is a discontinuous easement.

(c) Rights annexed to A's land to lead water thither across B's land by an aqueduct and to draw off water thence by a drain. The drain would be discovered upon careful inspection by a person conversant with such matters. These are apparent easements.

(d) A right annexed to A's house to prevent B from building on his own land. This is a non-apparent easement.

6. An easement may be permanent, or for a term of
Easement for limited time or on condition. years or other limited period, or subject to periodical interruption, or exerciseable only at a certain place, or at certain times or between certain hours, or for a particular purpose, or on condition that it shall commence or become void or voidable on the happening of a specified event or the performance or non-performance of a specified act.

7. Easements are restrictions of one or other of the
Easements restrictive of certain rights; Exclusive right to enjoy. following rights namely:—

(a) the exclusive right of every owner of immoveable property (subject to any law for the time being in force) to enjoy and dispose of the same and all products thereof and

accessions thereto ;

(b) the right of every owner of immoveable property (subject to any law for the time being in force) to enjoy without disturbance by another the natural advantages arising from its situation.

Rights to advantages arising from situation.

Illustrations of the Rights above referred to.

(a) The exclusive right of every owner of land in a town to build on such land, subject to any municipal law for the time being in force.

(b) The right of every owner of land that the air passing thereto shall not be unreasonably polluted by other persons.

(c) The right of every owner of a house that his physical comfort shall not be interfered with materially and unreasonably by noise or vibration caused by any other person.

(d) The right of every owner of land to so much light and air as pass vertically thereto.

(e) The right of every owner of land that such land, in its natural condition, shall have the support naturally rendered by the subjacent soil of another person.

EXPLANATION.—Land is in its natural condition when it is not excavated and not subjected to artificial pressure; and the “subjacent and adjacent soil” mentioned in this illustration means such soil only as in its natural condition would support the dominant heritage in its natural condition.

(f) The right of every owner of land that, within his own limits, the water which naturally passes or percolates by, over or through his land shall not, before so passing or percolating, be unreasonably polluted by other person.

(g) The right of every owner of land to collect and dispose within his own limits of all water under the land which does not pass in a defined channel and all water on its surface which does not pass in a defined channel.

(h) The right of every owner of land that the water of every natural stream which passes by, through or over his land in a defined natural channel shall be allowed by other person to flow within such owner's limits without interruption and without material alteration in quantity, direction, force or temperature: the right of every owner of land abutting on a natural lake or pond into or out of which a natural stream flows, that the water of such lake or pond shall be allowed by other persons to remain within such owner's limits without material alteration in quantity or temperature.

(i) The right of every owner of upper land that water naturally rising in, or falling on such land, and not passing in defined channels, shall be allowed by the owner of adjacent lower land to run naturally thereto.

(j) The right of every owner of land abutting on a natural stream, lake or pond to use and consume its water for drinking, household purposes and watering his cattle and sheep; and the right of every such owner to use and consume the water for irrigating such land, and for the purpose of any manufactory situate thereon, provided that he does not thereby, cause material injury to other like owners.

EXPLANATION.—A natural stream is a stream whether permanent intermittent, tidal or tideless on the surface of land or underground, which flows by the operation of nature only and in a natural and known course.

CHAPTER II.

THE IMPOSITION, ACQUISITION AND TRANSFER OF EASEMENTS.

8. An easement may be imposed by any one in the circumstances, and to the extent, in and to which he may transfer his interest in the heritage on which the liability is to be imposed.

Who may impose easements.

Illustrations.

(a) A is tenant of B's land under a lease for an unexpired term of twenty years, and has power to transfer his interest under the lease. A may impose an easement on the land to continue during the time that the lease exists or for any shorter period.

(b) A is tenant for his life of certain land with remainder to B absolutely. A cannot unless with B's consent, impose an easement thereon which will continue after the determination of his life-interest.

(c) A, B and C are co-owners of certain land. A cannot without the consent of B and C impose an easement on the land or on any part thereof.

(d) A and B are lessees of the same lessor, A of a field X for a term of five years, and B of a field Y for a term of ten years. A's interest under his lease is transferable; B's is not. A may impose on X, in favour of B a right of way terminable with A's lease.

9. Subject to the provisions of section 8 a servient owner may impose on the servient heritage any easement that does not lessen the utility of the existing easement. But he cannot, without the consent of the dominant owner, impose an easement on the servient heritage which would lessen such utility.

Servient owners.

Illustrations.

(a) A has, in respect of his mill, a right to the uninterrupted flow thereof, from sunrise to noon, of the water of B's stream. B may grant to C the right to divert the water of the stream from noon to sunset: provided that A's supply is not thereby diminished.

(b) A has, in respect of his house, a right of way over B's land, B may grant to C, as the owner of a neighbouring farm, the right to feed his cattle on the grass growing on the way: provided that A's right of way is not thereby obstructed.

10. Subject to the provisions of section 8, a lessor or mortgagor may impose, on the property leased, any easement that does not derogate from the rights of the lessee as such, and a mortgagor may impose, on the property mortgaged, any easement that does not render the security insufficient. But a lessor or mortgagor cannot, without the consent of the lessee or mortgagee, impose any other easement on such property, unless it be to take effect on the

Lessor and mortgagor.

termination of the lease or the redemption of the mortgage.

EXPLANATION.—A security is insufficient within the meaning of this section unless the value of the mortgaged property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the amount for the time being due on the mortgage.

11. No lessee or other person having a derivative interest may impose on the property held by him as such an easement to take effect after the expiration of his own interest or in derogation of the right of the lessor or the superior proprietor.

12. An easement may be acquired by the owner of the immovable property for the beneficial enjoyment of which the right is created, or on his behalf, by any person in possession of the same.

Who may acquire easements.

One of two or more co owners of immovable property may, as such, with or without the consent of the other or others, acquire an easement for the beneficial enjoyment of such property.

No lessee of immovable property can acquire, for the beneficial enjoyment of other immovable property of his own, an easement in or over the property comprised in his lease.

13. Where one person transfers or bequeaths immovable property to another,—

Easement of necessity and quasi-easement.

(a) if an easement in other immovable property of the transferor or testator is necessary for enjoying the subject of the transfer or bequest, the transferee or legatee shall be entitled to such easement; or

(b) if such an easement is apparent and continuous and necessary for enjoying the said subject as it was enjoyed when the transfer or bequest took effect, the transferee or legatee shall, unless a different intention is expressed or necessarily implied, be entitled to such easement;

(c) if an easement in the subject of the transfer or bequest is necessary for enjoying other immovable property of the transferor or testator, the transferor or the legal representative of the testator shall be entitled to such easement; or

(d) if such an easement is apparent and continuous and necessary for enjoying the said property as it was enjoyed when the transfer or bequest took effect, the transferor, or the legal representative of the testator, shall, unless a different intention is expressed or necessarily implied, be entitled to such easement.

Where a partition is made of the joint property of several persons,—

(e) if an easement over the share of one of them is

necessary for enjoying the share of another of them, the latter shall be entitled to such easement, or

(f) if such an easement is apparent and continuous and necessary for enjoying the share of the latter as it was enjoyed when the partition took effect, he shall, unless a different intention is expressed or necessarily implied, be entitled to such easement.

The easements mentioned in this section, clauses (a), (c) and (e), are called easements of necessity.

Where immoveable property passes by operation of law, the persons from and to whom it so passes are, for the purpose of this section, to be deemed, respectively, the transferor and transferee.

Illustrations.

(a) A sells B a field then used for agricultural purposes only. It is inaccessible except by passing over A's adjoining land or by trespassing on the land of a stranger. B is entitled to a right of way, for agricultural purposes only, over A's adjoining land to the field sold.

(b) A, the owner of two fields, sells one to B, and retains the other. The field retained was at the date of the sale used for agricultural purposes only and is inaccessible except by passing over the field sold to B. A is entitled to a right of way, for agricultural purposes only, over B's field to the field retained.

(c) A sells B a house with windows overlooking A's land which A retains. The light which passes over A's land to the windows is necessary for enjoying the house as it was enjoyed when the sale took effect. B is entitled to the light, and A cannot afterwards obstruct it by building on his land.

(d) A sells B a house with windows overlooking A's land. The light passing over A's land to the windows is necessary for enjoying the house as it was enjoyed when the sale took effect. Afterwards A sells the land to C. Here C cannot obstruct the light by building on the land for he takes it subject to the burdens to which it was subject in A's hands.

(e) A is the owner of a house and adjoining land. The house has windows overlooking the land. A simultaneously sells the house to B and the land to C. The light passing over the land is necessary for enjoying the house as it was enjoyed when the sale took effect. Here A impliedly grants B a right to the light, and C takes the land subject to the restriction that he may not build so as to obstruct such light.

(f) A is the owner of house and adjoining land. The house has windows overlooking the land. A, retaining the house, sells the land to B, without expressly reserving any easement. The light passing over the land is necessary for enjoying the house as it was enjoyed when the sale took effect. A is entitled to the light, and B cannot build on the land so as to obstruct such light.

(g) A, the owner of a house, sells B a factory built on adjoining land. B is entitled as against A, to pollute the air, when necessary, with smoke and vapours from the factory.

(h) A, the owner of two adjoining houses, Y and Z, sells Y to B, and retains Z. B is entitled to the benefit of all the gutters and drains common to the two houses and necessary for enjoying Y as it was enjoyed when the sale took effect, and is entitled to the benefit of all the gutters and drains

common to the two houses and necessary for enjoying Z as it was enjoyed when the sale took effect.

(i) A, the owner of two adjoining buildings, sells one to B, retaining the other. B is entitled to a right to lateral support from A's building, and A is entitled to a right to lateral support from B's building.

(j) A, the owner of two adjoining buildings, sells one to B and the other to C. C is entitled to lateral support from B's building, and B is entitled to lateral support from C's building.

(k) A grants lands to B for the purpose of building a house thereon. B is entitled to such amount of lateral and subjacent support from A's land as is necessary for the safety of the house.

(l) Under the Land Acquisition Act, a Railway Company compulsorily acquires a portion of B's land for the purpose of making a siding. The Company is entitled to such amount of lateral support from B's adjoining land as is essential for the safety of the siding.

(m) Owing to the partition of joint property, A becomes the owner of an upper room in a building, and B becomes the owner of the portion of the building immediately beneath it. A is entitled to such amount of vertical support from B's portion as is essential for the safety of the upper room.

(n) A lets a house and grounds to B for a particular business. B has no access to them other than by crossing A's land. B is entitled to a right of way over that land suitable to the business to be carried on by B in the house and grounds.

14. When a right to a way of necessity is created under section 13, the transferor, the legal representative of the testator, or the owner of the share over which the right is exercised, as the case may be, is entitled to set out the way; but it must be reasonably convenient for the dominant owner.

When the person so entitled to set out the way refuses or neglects to do so, the dominant owner may set it out.

15. Where the access and use of light or air, to and for any building have been peaceably enjoyed therewith, as an easement, without interruption, and for twenty years,

and where support from one person's land, or things affixed thereto, has been peaceably received by another person's land subjected to artificial pressure, or by things affixed thereto, as an easement, without interruption, and for twenty years,

and where a right of way or any other easement has been peaceably and openly enjoyed by any person claiming title thereto, as an easement, and as of right, without interruption, and for twenty years,

the right to such access and use of light or air support or other easement shall be absolute.

Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

EXPLANATION I.—Nothing is an enjoyment within the

meaning of this section when it has been had in pursuance of an agreement with the owner or occupier of the property over which the right is claimed, and it is apparent from the agreement that such right has not been granted as an easement, or, if granted as an easement, that it has been granted for a limited period, or subject to a condition on the fulfilment of which it is to cease.

EXPLANATION II. — Nothing is an interruption within the meaning of this section, unless where there is an actual cessation of the enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorising the same to be made.

EXPLANATION III. — Suspension of enjoyment in pursuance of a contract between the dominant and servient owners is not an interruption within the meaning of this section.

EXPLANATION IV. — In the case of an easement to pollute water, the said period of twenty years begins when the pollution first prejudices perceptibly the servient heritage.

When the property over which a right is claimed under this section belongs to Government, this section shall be read as if for the words "twenty years" the words "sixty years" were substituted.

Illustrations.

(a) A suit is brought in 1883 for obstructing a right of way. The defendant admits the obstruction, but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him claiming title thereto as an easement and as of right, without interruption, from 1st January, 1862, to 1st January, 1882. The plaintiff is entitled to judgment.

(b) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that for a year of that time the plaintiff was entitled to possession of the servient heritage as lessee thereof and enjoyed the right as such lessee. The suit shall be dismissed, for the right of way has not been enjoyed "as an easement" for twenty years.

(c) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff on one occasion during the twenty years had admitted that the user was not of right and asked his leave to enjoy the right. The suit shall be dismissed, for the right of way has not been enjoyed "as of right" for twenty years.

16. Provided that, when any land upon, over or from which any easement has been enjoyed or derived has been held under or by virtue of any interest for life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the conti-

Exclusion in favour of reversioner of servient heritage.

nuance of such interest or term shall be excluded in the computation of the said last-mentioned period of twenty years, in case the claim is, within three years next after the determination of such interest or term resisted by the person entitled, on such determination, to the said land.

Illustration.

A sues for a declaration that he is entitled to a right of way over B's land. A proves that he has enjoyed the right for twenty-five years, but B shows that during ten of these years C had a life-interest in the land, that on C's death B became entitled to the land, and that within two years after C's death he contested A's claim to the right. The suit must be dismissed, as A, with reference to the provisions of this section, has only proved enjoyment for fifteen years.

17. Easements acquired under section fifteen are said to be acquired by prescription, and are called pre-scriptive rights.

None of the following rights can be so acquired :—

(a) a right which would tend to the total destruction of the subject of the right, or the property on which if the acquisition were made, liability would be imposed ;

(b) a right to the free passage of light or air to an open space of ground ;

(c) a right to surface water not flowing in a stream and not permanently collected in a pool, tank or otherwise,

(d) a right to underground water not passing in a defined channel.

18. An easement may be acquired in virtue of a local custom. Such easements are called customary easements.

Illustrations.

(a) By the custom of a certain village every cultivator of village land is entitled as such to graze his cattle on the common pasture, A having become the tenant of a plot of uncultivated land in the village, breaks up and cultivates that plot. He thereby acquires an easement to graze his cattle in accordance with the custom.

(b) By the custom of a certain town no owner or occupier of a house can open a new window therein so as substantially to invade his neighbour's privacy. A builds a house in the town near B's house. A thereupon acquires an easement that B shall not open new windows in his house so as to command a view of the portions of A's house which are ordinarily excluded from observation, and B acquires a like easement with respect to A's house.

19. Where the dominant heritage is transferred or devolves, by act of parties or by operation of law, the transfer or devolution shall, unless a contrary intention appears, be deemed to pass

Transfer of dominant heri-
tage passes easement.

the easement to the person in whose favour the transfer or devolution takes place.

Illustration.

A has certain land to which a right of way is annexed. A lets the land to B for twenty years. The right of way vests in B and his legal representative so long as the lease continues.

CHAPTER III.

THE INCIDENTS OF EASEMENTS.

20. The rules contained in this Chapter are controlled by any contract between the dominant and servient owners relating to the servient heritage, and by the provisions of the instrument or decree, if any, by which the easement referred to was imposed.

Rules controlled by contract or title.

And when any incident of any customary easement is inconsistent with such rules, nothing in this Chapter shall effect such incident.

Incidents of customary easement.

21. An easement must not be used for any purpose not connected with the enjoyment of the dominant heritage.

Bar to use unconnected with enjoyment.

Illustrations.

(a) A, as owner of a farm Y, has a right of way over B's land to Y. Lying beyond Y, A has another farm Z, the beneficial enjoyment of which is not necessary for the beneficial enjoyment of Y. He must not use the easement for the purpose of passing to and from Z.

(b) A as a owner of a certain house, has a right of way to and from it. For the purpose of passing to and from the house, the right may be used, not only by A, but by the members of his family, his guests, lodgers, servants, workmen, visitors and customers; for this is a purpose connected with the enjoyment of the dominant heritage. So, if A lets the house, he may use this right of way for the purpose of collecting the rent and seeing that the house is kept in repair.

22. The dominant owner must exercise his right in the mode which is least onerous to the servient owner and when the exercise of an easement can without detriment to the dominant owner be confined to a determinate part of the servient heritage, such exercise shall at the request of the servient owner be so confined.

Exercise of easement.

Confinement of exercise of easement.

Illustrations.

(a) A has a right of way over B's field. A must enter the way at either end and not at any intermediate point.

(b) A has a right annexed to his house to cut thatching grass in B's swamp. A, when exercising his easement, must cut the grass so that the plants may not be destroyed.

23. Subject to the provisions of section 22, the dominant owner may, from time to time, alter the mode and place of enjoying the easement, provided that he does not thereby impose any additional burden on the servient heritage.

Right to do acts to secure enjoyment.

EXCEPTION. The dominant owner of a right of way cannot vary his line of passage at pleasure, even though he does not thereby impose any additional burden on the servient heritage.

Illustrations.

(a) A, the owner of a saw-mill, has a right to a flow of water sufficient to work the mill. He may convert the saw-mill into a corn-mill, provided that it can be worked by the same amount of water.

(b) A has a right to discharge on B's land the rain-water from the eaves of A's house. This does not entitle A to advance his eaves if, by so doing, he imposes a greater burden on B's land.

(c) A, as the owner of a paper-mill, acquires a right to pollute a stream by pouring in the refuse-liquor produced by making in the mill paper from rags. He may pollute the stream by pouring in similar liquor produced by making in the mill paper by new process from bamboos, provided that he does not substantially increase the amount or injuriously change the nature of the pollution.

(d) A, riparian owner acquires as against the lower riparian owners a prescriptive right to pollute a stream by throwing sawdust into it. This does not entitle A to pollute the stream by discharging into it poisonous liquor.

24. The dominant owner is entitled as against the servient owner, to do all acts necessary to secure the full enjoyment of the easement ; but such acts must be done at such time and in such manner as without detriment to the dominant owner, to cause the servient owner as little inconvenience as possible and the dominant owner must repair, as far as practicable the damage (if any) caused by the act to the servient heritage.

Right to do acts to secure enjoyment.

Rights to do acts necessary to secure the full enjoyment of an easement are called accessory rights.

Accessory rights.

Illustrations.

(a) A has an easement to lay pipes in B's land to convey water to A's cistern. A may enter and dig the land in order to mend the pipes, but he must restore the surface to its original state.

(b) A has an easement of a drain through B's land. The sewer with which the drain communicates is altered. A may enter upon B's land and alter the drain,

to adapt it to the new sewer, provided that he does not thereby impose any additional burden on B's land.

(c) A, as owner of certain house, has a right of way over B's land. The way is out of repair, or a tree is blown down and falls across it. A may enter on B's land and repair the way or remove the tree from it.

(d) A, as owner of a certain field, has a right of way over B's land. B renders the way impassable. A may deviate from the way and pass over the adjoining land of B, provided that the deviation is reasonable.

(e) A, as owner of a certain house, has a right of way over B's field. A may remove rocks to make the way.

(f) A has an easement of support from B's wall. The wall gives way. A may enter upon B's land and repair the wall.

(g) A has an easement to have his land flooded by means of a dam in B's stream. The dam is half swept away by an inundation. A may enter upon B's land and repair the dam.

25. The expenses incurred in constructing works or making repairs, or doing any other act necessary for the use or preservation of an easement, must be defrayed by the dominant owner.

26. Where an easement is enjoyed by means of an artificial work, the dominant owner is liable to make compensation for any damage to the servient heritage arising from the want of repair of such work.

27. The servient owner is not bound to do anything for the benefit of the dominant heritage, and he is entitled, as against the dominant owner, to use the servient heritage in any way consistent with the enjoyment of the easement; but he must not do any act tending to restrict the easement or to render its exercise less convenient.

Illustrations

(a) A, as owner of a house, has a right to lead water and send sewage through B's land. B is not bound as servient owner to clear the water-course or scour the sewer.

(b) A grants a right of way through his land to B as owner of a field. A may feed his cattle on grass growing on the way, provided that B's right of way is not thereby obstructed; but he must not build a wall at the end of his land so as to prevent B from going beyond it, nor must he narrow the way so as to render the exercise of the right less easy than it was at the date of the grant.

(c) A, in respect of his house, is entitled to an easement of support from B's wall. B is not bound as servient owner to keep the wall standing and in repair. But he must not pull down or weaken the wall so as to make it incapable of rendering the necessary support.

(d) A, in respect of his mill is entitled to a water-course through B's land. B must not drive stakes so as to obstruct the water-course.

(e) A, in respect of his house, is entitled to a certain quantity of light passing over B's land. B must not plant trees so as to obstruct the passage to A's windows of that quantity of light.

28. With respect to the extent of easements and the mode of their enjoyment, the following provisions shall take effect:—

Extent of easements.

An easement of necessity is co-extensive with the necessity as it existed when the easement was imposed.

Easement of necessity.

The extent of any other easement and the mode of its enjoyment must be fixed with reference to the probable intention of the parties, and the purpose for which the right was imposed or acquired.

Other easements.

In the absence of evidence as to such intention and purpose—

(a) a right of way of any one kind does not include a right of way of any other kind :

Right of way.

(b) the extent of a right to the passage of light or air to a certain window, door or other opening, imposed by a testamentary or non-testamentary instrument, is the quantity of light or air that entered the opening at the time the testator died or the non-testamentary instrument was made :

Right to light or air acquired by grant.

(c) the extent of a prescriptive right to the passage of light or air to a certain window, door or other opening is that quantity of light or air which has been accustomed to enter that opening during the whole of the prescriptive period irrespectively of the purposes for which it has been used :

Prescriptive right to light or air.

(d) the extent of a prescriptive right to pollute air or water is the extent of the pollution at the commencement of the period of user on completion of which the right arose, and

Prescriptive right to pollute air and water.

(e) the extent of every other prescriptive right and the mode of its enjoyment must be determined by the accustomed user of the right.

Other prescriptive rights.

29. The dominant owner cannot, by merely altering or adding to the dominant heritage, substantially increase an easement.

Increase of easement.

Where an easement has been granted or bequeathed so that its extent shall be proportionate to the extent of the dominant heritage, if the dominant heritage is increased by alluvion, the easement is proportionately increased, and if the dominant heritage is diminished by diluvion, the easement is proportionately diminished.

Save as aforesaid, no easement is affected by any change in the extent of the dominant or the servient heritage.

Illustrations.

(a) A, the owner of a mill, has acquired a prescriptive right to divert to his mill part of the water of a stream. A alters the machinery of his mill. He cannot thereby increase his right to divert water.

(b) A has acquired an easement to pollute a stream by carrying on a manufacture on its banks by which a certain quantity of foul matter is discharged into it. A extends his works and thereby increases the quantity discharged. He is responsible to the lower riparian owners for injury done by such increase.

(c) A, as the owner of a farm, has a right to take, for the purpose of manuring his farm, leaves which have fallen from the trees on B's land. A buys a field and unites it to his farm. A is not thereby entitled to take leaves to manure this field.

30. Where a dominant heritage is divided between two or more persons, the easement becomes annexed to each of the shares, but not so as to increase substantially the burden of the servient heritage: provided that such annexation is consistent with the terms of the instrument, decree or revenue proceeding (if any) under which the division was made, and, in the case of prescriptive rights, with the user during the prescriptive period.

Partition of dominant heritage.

Illustrations.

(a) A house to which a right of way by a particular path is annexed is divided into two parts, one of which is granted to A, the other to B. Each is entitled, in respect of his part, to a right of way by the same path.

(b) A house to which is annexed the right of drawing water from a well to the extent of fifty buckets a day is divided into two distinct heritages, one of which is granted to A, the other to B. A and B are each entitled, in respect of his heritage, to draw from the well fifty buckets a day; but the amount drawn by both must not exceed fifty buckets a day.

(c) A, having in respect of his house an easement of light, divides the house into three distinct heritages. Each of these continues to have the right to have its windows unobstructed.

31. In the case of excessive user of an easement the servient owner may, without prejudice to any other remedies to which he may be entitled, obstruct the user, but only on the servient heritage: provided that such user cannot be obstructed when the obstruction would interfere with the lawful enjoyment of the easement.

Obstruction in case of excessive user.

Illustration.

A, having a right to the free passage over B's land of light to four windows six feet by four, increases their size and number. It is impossible to obstruct the passage of light to the new windows without also obstructing the passage of light to the ancient windows. B cannot obstruct the excessive user.

CHAPTER IV.

THE DISTURBANCE OF EASEMENTS. ADVOCATE

32. The owner or occupier of the dominant heritage is entitled to enjoy the easement without disturbance by any other person.

Right to enjoyment without disturbance.

Illustration.

A, as the owner of a house, has the right of way over B's land. C unlawfully enters on B's land, and obstructs A in his right of way. A may sue C for compensation, not for the entry, but for the obstruction.

33. The owner of any interest in the dominant heritage, or the occupier of such heritage, may institute a suit for compensation for the disturbance of the easement or of any right accessory thereto: provided that the disturbance has actually caused substantial damage to the plaintiff.

Suit for disturbance of easement.

EXPLANATION I.—The doing of any act likely to injure the plaintiff by affecting the evidence of the easement, or by materially diminishing the value of the dominant heritage, is substantial damage within the meaning of this section and section 34.

EXPLANATION II.—Where the easement disturbed is a right to the free passage of light passing to the openings in a house, no damage is substantial within the meaning of this section, unless it falls within the first explanation, or interferes materially with the physical comfort of the plaintiff, or prevents him from carrying on his accustomed business in the dominant heritage as beneficially as he had done previous to instituting the suit.

EXPLANATION III.—Where the easement disturbed is a right to the free passage of air to the openings in a house, damage is substantial within the meaning of this section if it interferes materially with the physical comfort of the plaintiff, though it is not injurious to his health.

Illustrations.

(a) A places a permanent obstruction in a path over which B, as tenant of C's house, has a right of way. This is substantial damage to C, for it may affect the evidence of his reversionary right to the easement.

(b) A, as owner of a house, has a right to walk along one side of B's house. B builds a verandah overhanging the way about ten feet from the ground, and so as not to occasion any inconvenience to foot-passengers using the way. This is not substantial damage to A.

34. The removal of the means of support to which a dominant owner is entitled does not give rise to a right to recover compensation, unless and until substantial damage is actually sustained.

When cause of action arises for removal of support.

35. Subject to the provisions of the Specific Relief Act sections 52 to 57 (both inclusive), an injunction may be granted to restrain the disturbance of an easement—

Injunction to restrain disturbance.

(a) if the easement is actually disturbed,—when compensation for such disturbance might be recovered under this Chapter:

(b) if the disturbance is only threatened or intended,—when the act threatened or intended must necessarily, if performed, disturb the easement.

36. Notwithstanding the provisions of section 24 the dominant owner cannot himself abate a wrongful obstruction of an easement.

Abatement of obstruction of easement.

CHAPTER V.

THE EXTINCTION, SUSPENSION AND REVIVAL OF EASEMENTS.

37. When from a cause which preceded the imposition of an easement, the person by whom it was imposed ceases to have any right in the servient heritage, the easement is extinguished.

Extinction by dissolution of right of servient owner.

EXCEPTION.—Nothing in this section applies to an easement lawfully imposed by a mortgager in accordance with section 10.

Illustrations.

(a) A transfers Sultanpur to B on condition that he does not marry C. B imposes an easement on Sultanpur. Then B marries C. B's interest in Sultanpur ends, and with it the easement is extinguished.

(b) A, in 1860, lets Sultanpur to B for thirty years from the date of the lease. B, in 1861, imposes an easement on the land in favour of C, who enjoys the easement peaceably and openly as an easement without interruption for twenty-nine years. B's interest in Sultanpur then ends, and with it C's easement.

(c) A and B, tenants of C, have permanent transferable interests in their respective holdings. A imposes on his holding an easement to draw water from a tank for the purpose of irrigating B's land. B enjoys the easement for twenty years. Then A's rent falls into arrear and his interest is sold. B's easement is extinguished.

(d) A mortgages Sultanpur to B and lawfully imposes an easement on the land in favour of C, in accordance with the provisions of section 10. The land is sold to D in satisfaction of the mortgage-debt. The easement is not thereby extinguished.

38. An easement is extinguished when the dominant owner releases it, expressly or impliedly, to the servient owner.

Extinction by release

Such release can be made only in the circumstances and to the extent in and to which the dominant owner can alienate the dominant heritage.

An easement may be released as to part only of the servient heritage.

EXPLANATION I.—An easement is impliedly released—

(a) where the dominant owner expressly authorises an act of a permanent nature to be done on the servient heritage, the necessary consequence of which is to prevent his future enjoyment of the easement, and such act is done in pursuance of such authority ;

(b) where any permanent alteration is made in the dominant heritage of such a nature as to show that the dominant owner intended to cease to enjoy the easement in future.

EXPLANATION II.—Mere non-user of an easement is not an implied release within the meaning of this section.

Illustrations.

(a) A, B and C are co-owners of a house to which an easement is annexed. A, without the consent of B and C, releases the easement. This release is effectual only as against A and his legal representative.

(b) A grants B an easement over A's land for the beneficial enjoyment of his house. B assigns the house to C. B then purports to release the easement. The release is ineffectual.

(c) A, having the right to discharge his eavesdroppings into B's yard, expressly authorises B to build over this yard to a height which will interfere with the discharge. B builds accordingly. A's easement is extinguished to the extent of the interference.

(d) A having an easement of light to a window, builds up that window with bricks and mortar so as to manifest an intention to abandon the easement permanently. The easement is impliedly released.

(e) A having a projecting roof by means of which he enjoys an easement to discharge eav adroppings on B's land, permanently alters the roof, so as to direct the rain-water into a different channel and discharge it on C's land. The easement is impliedly released.

39. An easement is extinguished when the servient owner, in exercise of a power reserved in this behalf, revokes the easement.

Extinction by revocation.

40. An easement is extinguished where it has been imposed for a limited period, or acquired on condition that it shall become void on the performance or non-performance of a specified act and the period

Extinction on expiration of limited period or happening of dissolving condition.

expires or the condition is fulfilled.

41. An easement of necessity is extinguished when the necessity comes to an end.

Extinction on termination of necessity.

Illustration.

A grants B a field in accessible except by passing over A's adjoining land. B afterwards purchases a part of that land over which he can pass to his field. The right of way over A's land which B had acquired is extinguished.

42. An easement is extinguished when it becomes incapable of being at any time and under any circumstances beneficial to the dominant owner.

Extinction of useless easement.

43. Where, by any permanent change in the dominant heritage, the burden on the servient heritage is materially increased and cannot be reduced by the servient owner without interfering with the lawful enjoyment of the easement, the easement is extinguished, unless—

Extinction by permanent change in dominant heritage.

(a) it was intended for the beneficial enjoyment of the dominant heritage, to whatever extent the easement should be used ; or

(b) the injury caused to the servient owner by the change is so slight that no reasonable person would complain of it ; or

(c) the easement is an easement of necessity.

Nothing in this section shall be deemed to apply to an easement entitling the dominant owner to support of the dominant heritage.

44. An easement is extinguished where the servient heritage is by superior force so permanently altered that the dominant owner can no longer enjoy such easement :

Extinction on permanent alteration of servient heritage by superior force.

Provided that, where a way of necessity is destroyed by superior force, the dominant owner has a right to another way over the servient heritage ; and the provisions of section 14 apply to such way.

Illustrations.

(a) A grants to B, as the owner of a certain house a right to fish in a river running through A's land. The river changes its course permanently and runs through C's land. B's easement is extinguished.

(b) Access to a path which A has a right of way is permanently cut off by an earthquake. A's right is extinguished.

45. An easement is extinguished when either the dominant or the servient heritage is completely destroyed.

Extinction by destruction of either heritage.

Illustration.

A has a right of way over a road running along the foot of a sea-cliff. The road is washed away by a permanent encroachment of the sea. A's easement is extinguished.

46. An easement is extinguished when the same person becomes entitled to the absolute ownership of the whole of the dominant and servient heritages.

Extinction by unity of ownership.

Illustrations.

(a) A, as the owner of a house, has a right of way over B's field. A mortgages his house, and B mortgages his field to C. Then C forecloses both mortgages and becomes thereby absolute owner of both house and field. The right of way is extinguished.

(b) The dominant owner acquires only part of the servient heritage: the easement is not extinguished, except in the case illustrated in section 41

(c) The servient owner acquires the dominant heritage in connection with a third person: the easement is not extinguished.

(d) The separate owners of two separate dominant heritages jointly acquire the heritage which is servient to the two separate heritages: the easements are not extinguished.

(e) The joint owners of the dominant heritage jointly acquire the servient heritage: the easement is extinguished.

(f) A single right of way exists over two servient heritages for the beneficial enjoyment of a single dominant heritage. The dominant owner acquires one only of the servient heritages. The easement is not extinguished.

(g) A has a right of way over B's road. B dedicates the road to the public. A's right of way is not extinguished.

47. A continuous easement is extinguished when it totally ceases to be enjoyed as such for an unbroken period of twenty years.

Extinction by non-enjoyment.

A discontinuous easement is extinguished when, for a like period, it has not been enjoyed as such.

Such period shall be reckoned, in the case of a continuous easement, from the day on which its enjoyment was obstructed by the servient owner, or rendered impossible by the dominant owner; and, in the case of a discontinuous easement, from the day on which it was last enjoyed by any person as dominant owner:

Provided that if, in the case of a discontinuous easement, the dominant owner, within such period, registers, under the Registration Act, a declaration of his intention to retain such easement, it shall not be extinguished until a period of twenty years has elapsed from the date of the registration.

Where an easement can be legally enjoyed only at a certain place, or at certain times, or between certain hours, or for a particular purpose, its enjoyment during the said period at another place, or at other times, or between other hours, or for

another purpose, does not prevent its extinction under this section.

The circumstance that, during the said period, no one was in possession of the servient heritage, or that the easement could not be enjoyed, or that a right accessory thereto was enjoyed, or that the dominant owner was not aware of its existence, or that he enjoyed it in ignorance of his right to do so, does not prevent its extinction under this section.

An easement is not extinguished under this section—

(a) where the cessation is in pursuance of a contract between the dominant and servient owners ;

(b) where the dominant heritage is held in co-ownership, and one of the co-owners enjoys the easement within the said period ; or

(c) where the easement is a necessary easement.

Where several heritages are respectively subject to rights of way for the benefit of a single heritage, and the ways are continuous, such rights shall, for the purposes of this section, be deemed to be a single easement.

Illustration.

A has, as annexed to his house, rights of way from the high road thither over the heritages X and Z and the intervening heritage Y. Before the twenty years expire, A exercises his right of way over X. His rights of way over Y and Z are not extinguished.

48. When an easement is extinguished, the rights (if any) accessory thereto are also extinguished.

Extinction of accessory rights.

Illustration.

A has an easement to draw water from B's well. As accessory thereto, he has a right of way over B's land to and from the well. The easement to draw water is extinguished under section forty-seven. The right of way is also extinguished.

49. An easement is suspended when the dominant owner becomes entitled to possession of the servient heritage for a limited interest therein, or when the servient owner becomes entitled to possession of the dominant heritage for a limited interest therein.

Suspension of easement.

50. The servient owner has no right to require that an easement be continued ; and, notwithstanding the provisions of section 26, he is not entitled to compensation for damage caused to the servient heritage in consequence of the extinguishment or suspension of the easement, if the dominant owner has given to the servient owner such notice as will enable

Servient owner not entitled to require continuance.

him, without unreasonable expense to protect the servient heritage from such damage.

Where such notice has not been given, the servient owner is entitled to compensation for damage caused to the servient heritage in consequence of such extinguishment or suspension.

Compensation for
damage caused by extin-
guishment,

Illustration.

A, in exercise of an easement, diverts to his canal the water of B's stream. The diversion continues for many years and during that time the bed of the stream partly fills up. A then abandons his easement, and restores the stream to its ancient course. B's land is consequently flooded. B sues A for compensation for the damage caused by the flooding. It is proved that A gave B a month's notice of his intention to abandon the easement and that such notice was sufficient to enable B, without unreasonable expense, to have prevented the damage. This suit must be dismissed.

51. An easement extinguished under section 45 revives (a) when the destroyed heritage is, before twenty years have expired, restored by the deposit of alluvion; (b) when the destroyed heritage is a servient building and before twenty years have expired such building is rebuilt upon the same site; and (c) when the destroyed heritage is a dominant building and before twenty years have expired such building is rebuilt upon the same site and in such a manner as not to impose a greater burden on the servient heritage.

Revival of easements.

An easement extinguished under section 46 revives when the grant or bequest by which the unity of ownership was produced is set aside by the decree of a competent Court. A necessary easement extinguished under the same section revives when the unity of ownership ceases from any other cause.

A suspended easement revives if the cause of suspension is removed before the right is extinguished under section 47.

Illustration.

A, as the absolute owner of field Y, has a right of way thither over B's field Z. A obtains from B a lease of Z for twenty years. The easement is suspended so long as A remains lessee of Z. But when A assigns the lease to C, or surrenders it to B, the right of way revives.

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CHAPTER VI.

LICENCES.

52. Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immoveable property of the grantor, something which would, in the absence of such right, be unlawful and such right does not amount to an easement or an interest in the property, the right is called a licence.

"Licence" defined.

53. A licence may be granted by any one in the circumstances and to the extent in and to which he may transfer his interests in the property affected by the licence.

Who may grant licence.

54. The grant of a licence may be express or implied from the conduct of the grantor, and an agreement which purports to create an easement, but is ineffectual for that purpose, may operate to create a licence.

Grant may be express or implied.

55. All licences necessary for the enjoyment of any interest, or the exercise of any right are implied in the constitution of such interest or right. Such licences are called necessary licences.

Accessory licences annexed by law.

Illustration.

A sells the trees growing on his land to B. B is entitled to go on the land and take away the trees.

56. Unless a different intention is expressed or necessarily implied, a licence to attend a place of public entertainment may be transferred by the licensee; but, save as aforesaid, a licence cannot be transferred by the licensee or exercised by his servants or agents.

License when transferable.

Illustrations.

(a) A grants B a right to walk over A's field whenever he pleases. The right is not annexed to any immoveable property of B. The right cannot be transferred.

(b) The Government grant B a licence to erect and use temporary grain-sheds on Government land. In the absence of express provision to the contrary, B's servants may enter on the land for the purpose of erecting sheds, erect the same, deposit grain therein and remove grain therefrom.

57. The grantor of a licence is bound to disclose to the licensee any defect in the property affected by the licensee, likely to be dangerous to

Grantor's duty to disclose defects.

the person or property of the licensee of which the grantor is, and the licensee is not, aware.

58 The grantor of a licence is bound not to do anything likely to render the property affected by the licence dangerous to the person or property of the licensee.

Grantor's duty not to render property unsafe.

59. When the grantor of the licence transfers the property affected thereby, the transferee is not as such bound by the licence.

Grantor's transferee not bound by licence.

60. A licence may be revoked by the grantor, unless—

Licence when revocable.

(a) it is coupled with a transfer of property and such transfer is in force ;

(b) the licensee, acting upon the licence, has executed a work of a permanent character and incurred expenses in the execution.

61. The revocation of a licence may be express or implied.

Revocation express or implied.

Illustrations.

(a) A, the owner of a field, grants a licence to B to use a path across it. A, with intent to revoke the licence, locks a gate across the path. The licence is revoked.

(b) A, the owner of a field, grants a licence to B to stack hay on the field. A lets or sells the field to C. The licence is revoked.

62. A licence is deemed to be revoked—

Licence when deemed revoked.

(a) when, from a cause preceding the grant of it, the grantor ceases to have any interest in the property affected by the licence ;

(b) when the licensee releases it, expressly or impliedly, to the grantor or his representative ;

(c) where it has been granted for a limited period, or acquired on condition that shall become void on the performance or non-performance of a specified act, and the period expires or the condition is fulfilled ;

(d) where the property affected by the licence is destroyed or by superior force so permanently altered that the licensee can no longer exercise his right ;

(e) where the licensee becomes entitled to the absolute ownership of the property affected by the licence

(f) where the licence is granted for a specified purpose and the purpose is attained, or abandoned, or becomes impracticable;

(g) where the licence is granted to the licensee as holding a particular office, employment or character, and such office, employment or character ceases to exist;

(h) where the licence, totally ceases to be used as such for an unbroken period of twenty years and such cessation is not in pursuance of a contract between the grantor and the licensee;

(i) in the case of an accessory licence, when the interest or right to which it is accessory ceases to exist.

63. Where a licence is revoked, the licensee is entitled to ^{Licensee's rights on} a reasonable time to leave the property ^{revocation.} affected thereby and to remove any goods which he has been allowed to place on such property.

64. Where a licence has been granted for a consideration ^{Licensee's rights on} and the licence, without any fault of his ^{eviction.} own, is evicted by the grantor before he has fully enjoyed, under the licence, the right for which he contracted, he is entitled to recover compensation from the grantor.

THE EXPLOSIVES ACT, 1977.

Act No. XV of 1977.

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10. Forfeiture of explosives.
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THE EXPLOSIVES ACT, 1977.**Act. No. XV of 1977.**

[Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No. 8372, dated 11th September, 1920 and State Council Regulation No. 1, dated 8th April, 1925, (Notification No 14-L/81).]

An Act to regulate the manufacture, possession, use, sale, transport and Importation of Explosives.

WHEREAS it is expedient to regulate the manufacture, possession, use, sale, transport and importation of explosives ; It is hereby enacted as follows :—

1. Omitted.

2. Omitted.

3. Omitted.

4. In this Act unless there is something repugnant in the subject or context,

Definitions.

(1) " explosive "

(a) means gunpowder, nitro-glycerine, dynamite, gun-cotton, blasting powders, fulminate of mercury or of other metals, coloured fires and every other substance, whether similar to those above mentioned or not, used or manufactured with a view to produce a practical effect by explosion, or a pyrotechnic effect ; and

(b) includes fog-signals, fireworks, fuzes, rockets, percussion-caps, detonators, cartridges, ammunition of all descriptions and every adaptation or preparation of an explosive as above defined.

(2) " manufacture " includes the process of dividing into its component parts, or otherwise breaking up or unmaking any explosive, or making fit for use any damaged explosive, and the process of remaking, altering or repairing any explosive :

(3) " vessel " includes every boat and other vessel used in navigation, whether propelled by oars or otherwise :

(4) " carriage " includes any carriage, wagon, cart, truck, vehicle or other means of conveying goods or passengers by land, in whatever manner the same may be propelled.

(5) Omitted.

(6) "import" means to bring into the State.

5. (1) ¹[The Government] may make rules consistent with this Act to regulate or prohibit, except under and in accordance with the conditions of a licence granted as provided by those rules, the manufacture, possession, use, sale, transport and importation of explosives, or any specified class of explosives.

Power to make rules as to licensing of the manufacture, possession, use, sale, transport and importation of explosives.

(2) Rules under this section may provide for all or any of the following, among other matters, that is to say :—

- (a) the authority by which, licences may be granted ;
 - (b) the fees to be charged for licences, and the other sums (if any) to be paid for expenses by applicants for licences ;
 - (c) the manner in which applications for licences must be made, and the matters to be specified in such applications ;
 - (d) the form in which, and the conditions on and subject to which, licences must be granted ;
 - (e) the period for which licences are to remain in force ;
- and

(f) the exemption absolutely or subject to conditions of any explosives from the operation of the rules.

(3) The authority making rules under this section may by the rules impose penalties on all persons manufacturing, possessing, using, selling, transporting or importing explosives in breach of the rules, or otherwise contravening the rules :

Provided that the maximum penalty which may be imposed by any such rules shall not exceed—

- (a) in the case of a person so importing or manufacturing an explosive, a fine which may extend to three thousand rupees ;
- (b) in the case of a person so possessing, using or transporting an explosive, a fine which may extend to one thousand rupees ;
- (c) in the case of a person so selling an explosive, a fine which may extend to five hundred rupees ; and
- (d) in any other case, two hundred rupees.

6. (1) Notwithstanding anything in the rules under the last foregoing section, His Highness may, by notification in the Government Gazette,—

Power for His Highness to prohibit the manufacture, possession or importation of specially dangerous explosives.

(a) prohibit, either absolutely or subject to conditions the manufacture, possession or importation of any explosive

¹In sections 5 (1), 7, 9 (1) and 17 "the Government" substituted for "His Highness" by Act X of 1998 published in Government Gazette dated 15th Bhadon 1998.

which is of so dangerous a character that, in the opinion of His Highness, it is expedient for the public safety to issue the notification ;

(b) Repealed.

(2) Omitted.

(3) Any person manufacturing, possessing or importing an explosive in contravention of a notification issued under this section shall be punished with fine which may extend to three thousand rupees.

7. (1) ¹[The Government] may make rules consistent with this Act authorising any officer, either by name or in virtue of his office,—

Powers to make rules conferring powers of inspection, search, seizure, detention and removal.

(a) to enter, inspect and examine any place, carriage or vessel in which an explosive is being manufactured, possessed, used, sold, transported or imported under a licence granted under this Act or in which he has reason to believe that an explosive has been or is being manufactured, possessed, used, sold, transported or imported in contravention of this Act or of the rules made under this Act ;

(b) to search for explosives therein ;

(c) to take samples of any explosive found therein on payment of value thereof ; and

(d) to seize, detain, remove and, if necessary, destroy any explosive found therein.

(2) The provisions of the Code of Criminal Procedure relating to searches under that Code shall, so far as the same are applicable, apply to searches by officers authorised by rules under this section.

8. Whenever there occurs in or about, or in connection with, any place in which an explosive is manufactured, possessed or used, or any carriage or vessel either conveying an explosive or on or from which an explosive is being loaded or unloaded, any accident by explosion or by fire attended with loss of human life or serious injury to person or property, or of a description usually attended with such loss of injury, the occupier of the place, or the owner of the vessel, or the person in charge of the carriage, as the case may be, shall forthwith give notice thereof to the officer in charge of the nearest police station

Notice of accidents.

9. (1) Whenever, in the opinion of a District Magistrate, Sub-Divisional Magistrate or any other Magistrate specially empowered by ¹[the Government] in this behalf, an inquiry is necessary into the

Inquiry into accidents.

¹See footnote under section 5.

cause of any accident of the description mentioned in section 8, he may either himself make the inquiry, or direct a Magistrate subordinate to himself to make the inquiry.

(2) Any Magistrate making an inquiry under this section shall for the purposes of conducting the inquiry, have all the powers which he would have in holding an enquiry into an offence under the Code of Criminal Procedure.

(3) Omitted.

10. When a person is convicted of an offence punishable under this Act or the rules made under this Act the Court before which he is convicted may direct that the explosive or ingredient of the explosive or the substance (if any) in respect of which the offence has been committed or any part of that explosive, ingredient or substance shall, with the receptacles containing the same, be forfeited.

11. When the owner of a carriage or of a vessel is adjudged under this Act to pay a fine for an offence committed with, or in relation to, that vessel, the Court may, in addition to any other power it may have for the purpose of compelling payment of the fine, direct it to be levied by distress and sale of the carriage or vessel.

12. Whoever abets, within the meaning of the 'Ranbir Dand Bidhi, the commission of an offence punishable under this Act, or the rules made under this Act, or attempts to commit any such offence and in such attempt does any act towards the commission of the same, shall be punished as if he had committed the offence.

13. Whoever is found committing any act for which he is punishable under this Act or the rules under this Act, and which tends to cause explosion or fire in or about any place where an explosive is manufactured or stored, or any carriage, or boat, may be apprehended without a warrant by a Police officer, or by the occupier of, or agent or servant of, or other person authorised by the occupier of, that place, and be removed from the place where he is arrested and conveyed as soon as conveniently may be before a Magistrate.

14. Nothing in this Act shall apply to manufacture, possession, use, sale, transport and importation of any explosive—

a) by order of the Government; or

(b) by any person employed under the Government in the execution of this Act or as a keeper of a magazine, artizan, soldier, policeman or otherwise, in the course of his employment or duty as such.

15. Omitted.

16. Nothing in this Act or the rules under this Act shall ^{Saving as to liability under other law.} prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act or those rules or from being liable under that other law to any other or higher punishment or penalty than that provided by this Act or those rules:

Provided that a person shall not be punished twice for the same offence.

17. ^{Extension of definition of "explosive" to other explosive substances.} [The Government] may, from time to time, by notification in the Government Gazette declare that any substance which appears to ¹[the Government] to be specially dangerous to life or property by reason either of its explosive properties or of any process in the manufacture thereof being liable to explosion, shall be deemed to be an explosive within the meaning of this Act; and the provisions of this Act (subject to such exceptions, limitations and restrictions as may be specified in the notification) shall accordingly extend to that substance in like manner as if it were included in the definition of the term "explosive" in this Act.

18. Omitted.

THE EPIDEMIC DISEASES ACT, 1977.

Act No. XVI of 1977.

CONTENTS.

Preamble.

SECTION.

1. Omitted.

2. Power to take special measures and prescribe regulations as to dangerous epidemic diseases.

3. Penalty.

4. Protection to persons acting under Act.

¹ See footnote under section 5.

THE EPIDEMIC DISEASES ACT, 1977.**Act No. XVI of 1977.**

[Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No. 8372, dated 11th September, 1920 and State Council Resolution No. 1 dated 8th April 1925. (Notification No. 14-L-81).]

An Act to provide for the better prevention of the spread of Dangerous Epidemic Diseases.

WHEREAS it is expedient to provide for the better prevention of the spread of dangerous epidemic diseases ; It is hereby enacted as follows :—

1. Omitted.

2. (1) When at any time²[the Government] is satisfied that the State or any part thereof is visited by, or threatened with, an outbreak of any dangerous epidemic disease,³[the Government] if it thinks that the ordinary provisions of the law for the time being in force are insufficient for the purpose, may take or require or empower any person to take such measures and, by public notice, prescribe such temporary regulations to be observed by the public or by any person or class of persons as it shall deem necessary to prevent the outbreak of such disease or the spread thereof, and may determine in what manner and by whom any expenses incurred (including compensation if any) shall be defrayed.

(2) In particular and without prejudice to the generality of the foregoing provisions, the Government may take measures and prescribe regulations for—

(a) Omitted.

(b) the inspection of travellers and the segregation, in hospital, temporary accommodation or otherwise of persons suspected by the inspecting officer of being infected with any such disease.

3. Any person disobeying any regulation or order made under this Act shall be deemed to have committed an offence punishable under section 143 of the Ranbir Dand Bidhi.

Penalty.

4. No suit or other legal proceeding shall lie against any persons for anything done or in good faith intended to be done under this Act.

Protection to persons acting under Act.

¹Short title, extent and commencement are given and regulated by Act IV of 1977.

²In section 2 "the Government" substituted for "His Highness" vide Act X of 1996 published in Government Gazette dated 15th Bhason 1996.

³Section 143 Ranbir Dand Bidhi.

THE FATAL ACCIDENTS ACT, 1977,**Act No. XVII of 1977.****CONTENTS.***Preamble.***SECTION.****SECTION.**

1. Suit for compensation to the family of a person for loss occasioned to it by his death by actionable wrong.

2. Not more than one suit to be

brought. Claim for loss to the estate may be added.

3. Plaintiff shall deliver particulars etc.

4. Interpretation clause.

'THE FATAL ACCIDENTS ACT, 1977.**Act. No. XVII of 1977.**

[Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No. 8372, dated 11th September, 1920 and State Council Resolution No. 1, dated 8th April, 1925. (Notification No. 14-L/81).]

An Act to provide compensation to families for loss occasioned by the death of a person caused by actionable wrong.

Preamble. WHEREAS no action or suit is now maintainable in any Court against a person who, by his wrongful act, neglect or default, may have caused the death of another person, and it is often-times right and expedient that the wrong-doer in such case should be answerable in damages for the injury so caused by him ; It is enacted as follows :—

1. Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have

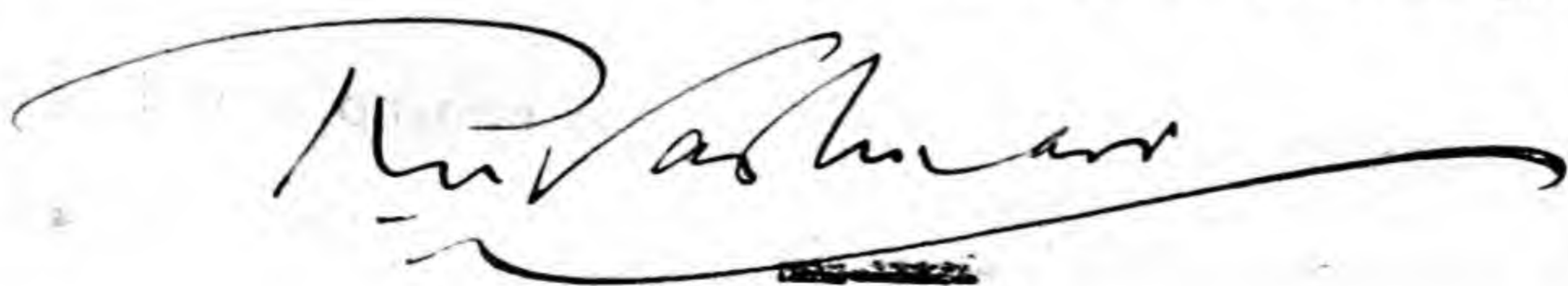
Suit for compensation to the family of a person for loss occasioned to it by his death by actionable wrong.

been liable if death had not ensued, shall be liable to an action or suit for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony or other crime. Every such action or suit shall be for the benefit of the wife, husband, parent and child, if any, of the person whose death shall have been so caused, and shall be brought by and in the name of the executor, administrator or representative of the person deceased ; and in every such action, the Court may give such damages as it may think proportioned to the loss resulting from such death to the parties respectively, for whom and for whose benefit such action shall be brought, and the amount so recovered, after deducting all costs and expenses, including the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties, or any of them, in such shares as the Court by its judgment or decree shall direct.

2. Provided always that not more than one action or suit shall be brought for, and in respect of the same subject-matter of complaint ; provided that in any such action or suit the executor, administrator or representative of the deceased may insert a claim for, and recover any pecuniary loss to the estate of the deceased occasioned by such wrongful act, neglect or default, which sum, when recovered, shall be deemed part of the assets of the estate of the deceased.

3. The plaintiff shall deliver particulars of the person or persons for whom, or on whose behalf, such action or suit shall be brought, and of the nature of the claim in respect of which damages shall be sought to be recovered.

4. The following words and expressions are intended to have the meanings hereby assigned to them respectively, so far as such meanings are not excluded by the context or by the nature of the subject-matter, that is to say, the word "person" shall apply to bodies politic and corporate ; and the word "parent" shall include father and mother, and grand-father and grand-mother ; and the word "child" shall include son and daughter, and grandson and grand-daughter, and step-son and step daughter.



THE PUBLIC GAMBLING ACT, 1977.

Act No XVIII of 1977.

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'THE PUBLIC GAMBLING ACT, 1977.**Act No. XVIII of 1977.**

[Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No. 8372, dated 11th September, 1920 and State Council Resolution No. 1, dated 8th April, 1925. (Notification No. 14-L/81).]

An Act to provide for the punishment of public gambling and the keeping of common gaming-house in the State.

Preamble. Whereas it is expedient to make provision for the punishment of public gambling and the keeping of common gaming-houses in the State; It is hereby enacted as follows:—

1. In this Act—

Common gaming-house. "Common gaming-house" means any house, walled enclosure, room, tent, space, vehicle, vessel or place in which cards, dice, tables or other instruments of gaming are kept or used for the profit or gain of the person owning, occupying, using or keeping such house, enclosure, room, tent, space, vehicle, vessel or place, whether by way of charge for the instruments of gaming, or of the house, enclosure, room, tent, space, vehicle, vessel or place, or otherwise howsoever :

"Instrument of gaming" includes any article used as a means or appurtenance of or for the purpose of carrying on or facilitating gaming.

2. [The Government may whenever it deem fit] extend,
Power to extend Act. by a notification to be published in three successive numbers of the Jammu and Kashmir Government Gazette, all or any of the sections, of this Act to any city, town or suburb, subject to His Highness' Government or administration, and in such notification define, for the purposes of this Act the limits of such city, town or suburb, and, from time to time, alter the limits so defined.

From the date of any such extension, so much of any rule having the force of law which shall be in operation in the territories, to which such extension shall have been made, as shall be inconsistent with or repugnant to any section, so extended, shall cease to have effect in such territories.

¹Short title, extent and commencement are given and regulated by Act IV of 1977.

²In section 2 words within brackets substituted for the words "His Highness whenever he may think fit, may" vide Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

Any such extension, heretofore made under the provisions of the State Gambling Regulation, 1961, shall be deemed to have been made under this Act.

3. Whoever, being the owner or occupier, or having the use, of any house, walled enclosure, room, tent, space, vehicle, vessel or place situate within the limits to which this Act applies, opens, keeps or uses the same as a common gaming-house ; and

Penalty for owning or keeping or having charge of, a gaming-house.

whoever, being the owner or occupier of any such house, walled enclosure, room, tent, space, vehicle, vessel or place as aforesaid, knowingly or wilfully permits the same to be opened, occupied, used or kept by any other person as a common gaming-house ; and

whoever has the care or management of, or in any manner assists in conducting, the business of any house, walled enclosure, room, tent, space, vehicle, vessel or place as aforesaid, opened, occupied, used or kept for the purpose aforesaid ; and

whoever advances or furnishes money for the purpose of gaming with persons frequenting such house, walled enclosure, room, tent, space, vehicle, vessel, or place,

shall be liable to a fine not exceeding two hundred rupees, or to imprisonment of either description as defined in the 'Ranbir Dand Bidhi, for any term not exceeding three months.

4. Whcever is found in any such house, walled enclosure,

Penalty for being found in gaming-house.

room, tent, space, vehicle, vessel or place playing or gaming with cards, dice, counters, money or other instruments of gaming, or is found there present for the purpose of gaming, whether playing for any money, wager, stake or otherwise, shall be liable to a fine not exceeding one hundred rupees, or to imprisonment of either description, as defined in the in the 'Ranbir Dand Bidhi, for any term not exceeding one month;

and any person found in any common gaming-house during any gaming or playing therein shall be presumed, until the contrary be proved, to have been there for the purpose of gaming.

5. If the Magistrate of a district, or other officer invested with the full powers of a Magistrate or the Districts Superintendent of Police ²[or a Police officer higher in rank] upon credible information and after

Power to enter and authorise Police to enter and search

¹Ranbir Penal Code.

²Words within brackets added in section 5 by Notification 28-L/88 published in Government Gazette dated 12th Oct 1988.

such enquiry as he may think necessary, has reason to believe that any house, walled enclosure, room, tent, space, vehicle, vessel or place, is used as a common gaming-house,

he may either himself enter, or by his warrant authorise any officer of Police, not below such rank as ¹[the Government] shall appoint in this behalf, to enter, with such assistance as may be found necessary, by night or by day, and by force if necessary, any such house, walled enclosure, room, tent, vehicle, vessel or place,

and may either himself take into custody, or authorise such officer to take in to custody, all persons whom he or such officer find therein, whether or not then actually gaming ;

and may seize or authorise such officer to seize all instruments of gaming, and all moneys and securities for money, and articles of value, reasonably suspected to have been used or intended to be used for the purpose of gaming, which are found therein ;

and may search or authorise such officer to search all parts of the house, walled enclosure, room, tent, space, vehicle, vessel or place, which he or such officer shall have so entered, when he or such officer has reason to believe that any instruments of gaming are concealed therein, and also the persons of those whom he or such officer so takes into custody ;

and may seize or authorise such officer to seize and take possession of all instruments of gaming found upon such search.

6. When any cards, dice, gaming-tables, cloths, boards or other instruments of gaming are found in, any house walled enclosure, room, tent, space, vehicle, vessel or place, entered or searched under the provisions of the last preceding section, or about the person of any of those who are found therein, it shall be evidence, until the contrary is made to appear, that such house, walled enclosure, room, tent, space, vehicle, vessel or place is used as a common gaming-house, and that the persons found therein were there present for the purpose of gaming, although no play was actually seen by the Magistrate or Police officer, or any of his assistants.

7. If any person found in any common gaming-house entered by any Magistrate or officer of Police under the provisions of this Act upon being arrested or upon being brought before any Magistrate, on being required by such officer or Magistrate to give his name and address, shall refuse or neglect to give the same, or shall give any false name or address, he may, upon conviction before the same or any other Magistrate, be adjudged to pay any penalty

¹ Substituted for "His Highness" vide Act X of 1936, published in Government Gazette dated 15th Bhadon 1936.

not exceeding five hundred rupees, together with such costs as to such Magistrate shall appear reasonable, and on the non-payment of such penalty and costs, or in the first instance, if to such Magistrate it shall seem fit, may be imprisoned for any period not exceeding one month.

8. On conviction of any person for keeping or using any On conviction for keeping a gaming-house, instruments of gaming to be destroyed. such common gaming-house, or being present therein for the purpose of gaming the convicting Magistrate may order all the instruments of gaming found therein to be destroyed, and may also order all or any of the securities for money and other articles seized, not being instruments of gaming, to be sold and converted into money, and the proceeds thereof with all moneys seized therein to be forfeited; or, in his discretion, may order any part thereof to be returned to the persons appearing to have been severally thereunto entitled.

9. It shall not be necessary, in order to convict any Proof of playing for stakes unnecessary. person of keeping a common gaming-house, or of being concerned in the management of any common gaming-house, to prove that any person found playing at any game was playing for any money, wager or stake

10. It shall be lawful for the Magistrate before whom any Magistrate may require any person apprehended to be sworn and give evidence. persons shall be brought, who have been found in any house, walled enclosure, room, tent, space, vehicle, vessel or place entered under the provisions of this Act to require any such persons to be examined on oath or solemn affirmation, and give evidence touching any unlawful gaming in such house, walled enclosure, room, tent, space, vehicle, vessel or place, or touching any act done for the purpose of preventing, obstructing or delaying the entry into such house, walled enclosure, room, tent, space, vehicle, vessel or place or any part thereof, of any Magistrate or officer authorised as aforesaid.

No person so required to be examined as a witness shall be excused from being so examined when brought before such Magistrate as aforesaid, or from being so examined at any subsequent time by or before the same or any other Magistrate, or by or before any Court on any proceeding or trial in any ways relating to such unlawful gaming or any such acts as aforesaid, or from answering any question put to him touching the matters aforesaid, on the ground that his evidence will tend to criminate himself.

Any such person so required to be examined as a witness, who refuses to make oath or take affirmation accordingly or to answer any such question as aforesaid, shall be subject to be

dealt with in all respects as any person committing the offence described in 'section 137 of the Ranbir Dand Bidhi.

11. Any person who shall have been concerned in gaming contrary to this Act, and who shall be examined as a witness before a Magistrate on the trial of any person for a breach of any of the provisions of this Act relating to gaming, and who, upon such examination, shall, in the opinion of the Magistrate, make true and faithful discovery to the best of his knowledge, of all things as to which he shall be so examined, shall thereupon receive from the said Magistrate a certificate in writing to that effect, and shall be freed from all prosecutions under this Act for anything done before that time in respect of such gaming.

Witnesses indemnified.

12. Nothing in this Act contained shall be held to apply to any game of mere skill wherever played.

Act not to apply to certain games.

Gaming and setting birds and animals to fight in public streets.

13. A Police officer may apprehend without warrant—

any person found playing for money or other valuable thing with cards, dice, counters or other instruments of gaming used in playing any game not being a game of mere skill in any public street, place or thoroughfare situated within the limits aforesaid, or

any person setting any birds or animals to fight in any public street, place or thoroughfare situated within the limits aforesaid, or

any person there present aiding and abetting such public fighting of birds and animals.

Such persons when apprehended shall be brought without delay before a Magistrate, and shall be liable to a fine not exceeding fifty rupees, or to imprisonment, either simple or rigorous, for any term not exceeding one calendar month ;

and such Police officer may seize all instruments of gaming found in such public place or on the person of those whom he shall so arrest, and the Magistrate may, on conviction of the offender, order such instruments to be forthwith destroyed.

Destruction of instruments of gaming found in public streets.

14. Offences punishable under this Act shall be triable by a Magistrate of the first class having jurisdiction in the place where the offence is committed.

Offences by whom triable.

But such Magistrate shall be restrained within the limits of his jurisdiction under the Code of Criminal Procedure, as to the amount of fine or imprisonment he may inflict.

15. Whoever, having been convicted of an offence punishable under section 3 or section 4 of this Act shall again be guilty of any offence punishable under either of such sections, shall be subject for every such subsequent offence to double the amount of punishment to which he would have been liable for the first commission of an offence of the same description :

Provided that he shall not be liable in any case to a fine exceeding six hundred rupees, or to imprisonment for a term exceeding one year.

16. The Magistrate trying the case may direct any portion of any fine which shall be levied under sections 3 and 4 of this Act or any part of the moneys or proceeds of articles seized and ordered to be forfeited under this Act to be paid to an informer.

17. All fines imposed under this Act may be recovered in the manner prescribed by sections 386, 387 and 389 of the Code of Criminal Procedure, and such fines shall (subject to the provisions contained in the last preceding section) be applied as ¹[the Government] shall, from time to time, direct.

THE GUARDIANS AND WARDS ACT, 1977

Act No. XIX of 1977.

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¹Substituted for "His Highness" vide Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

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THE GUARDIANS AND WARDS ACT, 1977

act No. XIX of 1977.

[Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Ministers endorsement No. 8372, dated 11th September, 1920 and State Council Resolution No. 1, dated 8th April, 1925. (Notification No. 14-L/81).]

An Act to consolidate and amend the law relating to Guardian and Ward.

WHEREAS it is expedient to consolidate and amend the law relating to guardian and ward; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. Omitted.

¹Short title, extent and commencement are given and regulated by Act IV of 1977.

2. All proceedings had, certificates granted, allowances assigned, obligations imposed, and applications, appointments, and orders made heretofore, or matters dealt with by this Act shall, so far as may be, be deemed to have been respectively had, granted, assigned, imposed and made under this Act.

3. This Act shall be read subject to every enactment ^{Saving of jurisdiction of} heretofore or hereafter passed relating to ^{Courts of Wards.} any Court of Wards by His Highness ¹[or the Government] and nothing in this Act shall be construed to affect, or in any way derogate from, the jurisdiction or authority of any Court of Wards.

4. In this Act, unless there is something repugnant in the subject or context,—

Definitions.

(1) "minor" means a person who, under the provisions of the Majority Act, is to be deemed not to have attained his majority:

(2) "guardian" means a person having the care of the person of a minor or of his property, or of both his person and property:

(3) "ward" means a minor for whose person or property, or both, there is a guardian:

(4) "District Court" has the meaning assigned to that expression in the Code of Civil Procedure:

²[(5) "the Court" means—

(a) the District Court having jurisdiction to entertain an application under this Act for an order appointing or declaring a person to be a guardian, or

(b) where a guardian has been appointed or declared in pursuance of any such application—

(i) the Court which, or the Court of the officer who, appointed or declared the guardians or is under this Act deemed to have appointed or declared the guardian; or

(ii) in any matter relating to the person of the ward the District Court having jurisdiction in the place where the ward for the time being ordinarily resides; or

(c) in respect of any proceeding transferred under section 4-A, the Court of the officer to whom such proceeding has been transferred.]

(6) "Collector" means the chief officer in charge of the revenue-administration of a district, and includes any officer

¹In section 3 words in brackets added *vide* Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

²Clause (5) substituted *vide* Act VII of 1989 published in Government Gazette dated 25th Har 1989.

whom ¹[the Government], by notification in the Jammu and Kashmir Government Gazette, may, by name or in virtue of his office, appoint to be a Collector in any local area or with respect to any class of persons, for all or any of the purposes of this Act; and

(7) "prescribed" means prescribed by rules made by the High Court under this Act.

²[4-A. (1) The High Court may, by general or special order empower any officer exercising original civil jurisdiction subordinate to a District Court, or authorise the Judge of any District Court to empower any such officer subordinate to him, to dispose of any proceedings under this Act transferred to such officer under the provisions of this section.

Power to confer jurisdiction on subordinate Judicial Officers and to transfer proceedings to such officers.

(2) The Judge of a District Court may, by order in writing, transfer at any stage any proceeding under this Act pending in his Court for disposal to any officer subordinate to him empowered under sub-section (1).

(3) The Judge of a District Court may, at any stage, transfer to his own Court or to any officer subordinate to him empowered under sub-section (1) any proceeding under this Act pending in the Court of any other such officer.

(4) When any proceedings are transferred under this section in any case in which a guardian has been appointed or declared, the Judge of the District Court may, by order in writing, declare that the Court of the Judge or officer to whom they are transferred shall, for all or any of the purposes of this Act, be deemed to be the Court which appointed or declared the guardian.]

CHAPTER II.

APPOINTMENT AND DECLARATION OF GUARDIANS.

5. Omitted.

6. In the case of a minor, nothing in this Act shall be construed to take away or derogate from any power to appoint a guardian of his person or property, or both, which is valid by the law to which the minor is subject.

¹Substituted for "His Highness" vide Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

²Section 4-A inserted vide Act VII of 1980 published in Government Gazette dated 24th May 1980.

7. (1) Where the Court is satisfied that it is for the welfare of a minor that an order should be made—
Power of the Court to make order as to guardianship.

(a) appointing a guardian of his person or property, or both, or

(b) declaring a person to be such a guardian, the Court may make an order accordingly.

(2) An order under this section shall imply the removal of any guardian who has not been appointed by will or other instrument or appointed or declared by the Court.

(3) Where a guardian has been appointed by will or other instrument or appointed or declared by the Court, an order under this section appointing or declaring another person to be guardian in his stead shall not be made until the powers of the guardian appointed or declared as aforesaid have ceased under the provisions of this Act.

8. An order shall not be made under the last foregoing section except on the application of—
Persons entitled to apply for order.

(a) the person desirous of being, or claiming to be, the guardian of the minor, or

(b) any relative or friend of the minor, or

(c) the Collector of the district or other local area within which the minor ordinarily resides or in which he has property, or

(d) the Collector having authority with respect to the class to which the minor belongs.

9. (1) If the application is with respect to the guardianship of the person of the minor, it shall be made either to the District Court having jurisdiction in the place where the minor ordinarily resides.
Court having jurisdiction to entertain application.

(2) If the application is with respect to the guardianship of the property of the minor, it may be made either to the District Court having jurisdiction in the place where the minor ordinarily resides or to a District Court having jurisdiction in a place where he has property.

(3) If any application with respect to the guardianship of the property of a minor is made to a District Court other than that having jurisdiction in the place where the minor ordinarily resides, the Court may return the application if in its opinion the application would be disposed of more justly or conveniently by any other District Court having jurisdiction.

10. (1) If the application is not made by the Collector, it shall be by petition signed and verified in manner prescribed by the Code of Civil
Form of application.

Procedure for the signing and verification of a plaint, and stating, so far as can be ascertained,—

(a) the name, sex, religion, date of birth and ordinary residence of the minor ;

(b) where the minor is a female, whether she is married, and, if so, the name and age of her husband ;

(c) the nature, situation and approximate value of the property, if any of the minor ;

(d) the name and residence of the person having the custody or possession of the person or property of the minor ;

(e) what near relations the minor has, and where they reside ;

(f) whether a guardian of the person or property, or both, of the minor has been appointed by any person entitled or claiming to be entitled by the law to which the minor is subject to make such an appointment ;

(g) whether an application has at any time been made to the Court or to any other Court with respect to the guardianship of the person or property, or both, of the minor, and, if so, when, to what Court and with what result ;

(h) whether the application is for the appointment or declaration of a guardian of the person of the minor, or of his property, or of both ;

(i) where the application is to appoint a guardian, the qualifications of the proposed guardian ;

(j) where the application is to declare a person to be a guardian, the grounds on which that person claims ;

(k) the causes which have led to the making of the application ; and

(l) Such other particulars, if any, as may be prescribed or as the nature of the application renders it necessary to State.

(2) If the application is made by the Collector, it shall be by letter addressed to the Court and forwarded by the post or in other such manner as may be found convenient, and shall state as far as possible the particulars mentioned in subsection (1).

(3) The application must be accompanied by a declaration of the willingness of the proposed guardian to act, and the declaration must be signed by him and attested by at least two witnesses.

11. (1) If the Court is satisfied that there is ground for proceeding on the application, it shall fix a day for the hearing thereof, and cause notice of the application and of the date fixed for the hearing—

(a) to be served in the manner directed in the Code of

Procedure on admission
of application.

Civil Procedure on—

- (i) the parents of the minor if they are residing in the State,
- (ii) the person, if any, named in the petition or letter as having the custody or possession of the person or property of the minor,
- (iii) the person proposed in the application or letter to be appointed or declared guardian, unless that person is himself the applicant, and
- (iv) any other person to whom, in the opinion of the Court, special notice of the applications should be given; and

(b) to be posted on some conspicuous part of the court-house, and of the residence of the minor, or otherwise published in such manner as the Court, subject to any rules made by the High Court under this Act thinks fit.

(2) ¹[The Government] may, by general or special order, require that, when any part of the property described in a petition under section 10 sub-section (1), is land of which a Court of Wards could assume the superintendence, the Court shall also cause a notice as aforesaid to be served, on the Collector in whose district the minor ordinarily resides and on every Collector in whose district any portion of the land is situate, and the Collector may cause the notice to be published in any manner he deems fit.

(3) No charge shall be made by the Court or the Collector for the service or publication of any notice served or published under sub-section (2).

12. (1) The Court may direct that the person, if any, having the custody of the minor shall produce him or cause him to be produced at such place and time and before such person as it appoints, and may make such order for the temporary custody and protection of the person or property of the minor as it thinks proper.

(2) If the minor is female who ought not to be compelled to appear in public, the direction under sub-section (1) for her production shall require her to be produced in accordance with the customs and manners of the country.

(3) Nothing in this section shall authorise—

(a) the Court to place a female minor in the temporary custody of a person claiming to be her guardian on the ground of his being her husband, unless she is already in his custody with the consent of her parents, if any, or

¹In sections 11(2), 22, 23 and 40 (2) "the Government" substituted for "His Highness" vide Act X of 1996 published in the Government Gazette dated 15th Bhado 1996.

(b) any person to whom the temporary custody and protection of the property of a minor is entrusted to dispossess otherwise than by due course of law any person in possession of any of the property.

13. On the day fixed for the hearing of the application, or Hearing of evidence as soon afterwards as may be, the Court before making of orders. shall hear such evidence as may be adduced in support of or in opposition to the application.

14. If proceedings for the appointment or declaration of a Simultaneous proceedings in different Courts. guardian of a minor are taken in more Courts than one, each of those Courts shall, on being apprised of the proceedings in the other Courts or Courts, stay the proceedings before itself, and shall report the case to the High Court, and the High Court shall determine in which of the Courts the proceedings with respect to the appointment or declaration of a guardian of the minor shall be had.

15. (1) If the law to which the minor is subject admits Appointment or declaration of several guardians. of his having two or more joint guardians of his person or property, or both, the Court may, if it thinks fit, appoint or declare them.

(2) Omitted.

(3) Omitted.

(4) Separate guardians may be appointed or declared of the person and of the property of a minor.

(5) If a minor has several properties, the Court may, if it thinks fit, appoint or declare a separate guardian for any one or more of the properties.

16. If the Court appoints or declares a guardian for any Appointment or declaration of guardian for property beyond jurisdiction of the Court. property situate beyond the local limits of its jurisdiction, the Court having jurisdiction in the place, where the property is situate shall, on production of a certified copy of the order appointing or declaring the guardian, accept him as duly appointed or declared and give effect to the order.

17. (1) In appointing or declaring the guardian of a minor, Matters to be considered by the Court in appointing guardian. the Court shall, subject to the provisions of this section, be guided by what, consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor.

(2) In considering what will be for the welfare of the minor, the Court shall have regard to the age, sex and religion of the minor, the character and capacity of the proposed guardian and his nearness of kin to the minor, the wishes, if any, of a

deceased parent, and any existing or previous relations of the proposed guardian with the minor or his property.

(3) If the minor is old enough to form an intelligent preference, the Court may consider that preference.

(4) Omitted.

(5) The Court shall not appoint or declare any person to be a guardian against his will.

18. Where a Collector is appointed or declared by the Court in virtue of his office to be guardian of the person or property, or both, of a minor, the order appointing or declaring him shall be deemed to authorise and require the person for the time being holding the office to act as guardian of the minor with respect to his person or property, or both, as the case may be.

Appointment or declaration of Collector in virtue of office.

19. Nothing in this Chapter shall authorise the Court to appoint or declare a guardian of the property of a minor whose property is under the superintendence of a Court of Wards, or to appoint or declare a guardian of the person—

Guardian not to be appointed by the Court in certain cases.

(a) of a minor who is married female and whose husband is not, in the opinion of the Court, unfit to be guardian of her person, or,

(b) of a minor whose father is living and is not, in the opinion of the Court unfit to be guardian of the person of the minor, or

(c) of a minor whose property is under the superintendence of a Court of Wards competent to appoint a guardian of the person of the minor.

CHAPTER III.

DUTIES, RIGHTS AND LIABILITIES OF GUARDIANS.

General.

20. (1) A guardian stands in a fiduciary relation to his ward, and save as provided by the will of other instrument, if any, by which he was appointed, or by this Act, he must not make any profit out of his office.

Fiduciary relation of guardian to ward.

(2) The fiduciary relation of a guardian to his ward extends to and affects purchases by the guardian of the property of the ward, and by the ward of the property of the guardian, immediately or soon after the ward has ceased to be a minor,

and generally all transactions between them while the influence of the guardian still lasts or is recent.

21. A minor is incompetent to act as guardian of any minor except his own wife or child or where he is the managing member of an undivided Hindu family. the wife or child of another minor member of that family.

22. (1) A guardian appointed or declared by the Court shall be entitled to such allowance, if any, as the Court thinks fit for his care and pains in the execution of his duties.

(2) When officer of the Government, as such officer, is so appointed or declared to be guardian, such fees shall be paid to the Government out of the property of the wards as ¹[the Government] by general or special order, direct.

23. A Collector appointed or declared by the Court to be guardian of the person or property, or both, of a minor, shall in all matters connected with the guardianship of his ward, be subject to the control of ¹[the Government] or of such authority as ¹[the Government] by notification in the Jammu and Kashmir Government Gazette, appoints in this behalf.

24. A guardian of the person of a ward is charged with the custody of the ward and must look to his support, health and education, and such other matters as the law to which the ward is subject requires.

25. (1) If a ward leaves or is removed from the custody of a guardian of his person, the Court, if it is of opinion that it will be for the welfare of the ward to return to the custody of his guardian, may make an order for his return, and for the purpose of enforcing the order may cause the ward to be arrested and to be delivered into the custody of the guardian.

(2) For the purpose of arresting the ward, the Court may exercise the power conferred on a Magistrate of the First Class by section 100 of the Code of the Criminal Procedure.

(3) The residence of a ward against the will of his guardian with a person who is not his guardian does not of itself terminate the guardianship.

26. (1) A guardian of the person appointed or declared by the Court, unless he is the Collector or is a guardian appointed by will or other instrument, shall not, without the leave of the Court by which he was appointed or declared, remove the ward from

¹See footnote under section 11.

the limits of its jurisdiction except for such purposes as may be prescribed.

(2) The leave granted by the Court under sub-section (1) may be special or general, and may be defined by the order granting it.

Guardian of property.

27. A guardian of the property of a ward is bound to deal therewith as carefully as a man of ordinary prudence would deal with it if it were his own, and, subject to the provisions of this Chapter, he may do all acts which are reasonable and proper for the realisation, protection or benefit of the property.

28. Where a guardian has been appointed by will or other instrument, his power to mortgage or charge, or transfer by sale, gift, exchange or otherwise, immovable property belonging to his ward is subject to any restriction which may be imposed by the instrument, unless he has under this Act been declared guardian and the Court which made the declaration permits him by an order in writing, notwithstanding the restriction, to dispose of any immovable property specified in the order in a manner permitted by the order.

29. Where a person other than a Collector, or than a guardian appointed by will or other instrument, has been appointed or declared by the Court to be guardian of the property of a ward, he shall not, without the previous permission of the Court,—

(a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of his ward, or

(b) lease any part of that property for a term exceeding five years or for any term extending more than one year beyond the date on which the ward will cease to be a minor.

30. A disposal of immovable property by a guardian in contravention of either of the two last foregoing sections is voidable at the instance of any other person affected thereby.

31. (1) Permission to the guardian to do any of the acts mentioned in section 29 shall not be granted by the Court except in case of necessity or for an evident advantage to the ward.

(2) The order granting the permission shall recite the

necessity or advantage, as the case may be, describe the property with respect to which the act permitted is to be done, and specify such conditions, if any, as the Court may see fit to attach to the permission; and it shall be recorded, dated and signed by the Judge of the Court with his own hand, or, when from any cause he is prevented from recording the order with his own hand, shall be taken down in writing from his dictation and be dated and signed by him.

(3) The Court may in its discretion attach to the permission the following among other conditions, namely :—

(a) that a sale shall not be completed without the sanction of the Court ;

(b) that a sale shall be made to the highest bidder by public auction, before the Court or some person specially appointed by the Court for that purpose, at a time and place to be specified by the Court, after such proclamation of the intended sale as the Court, subject to any rules made under this Act by the High Court, directs ;

(c) that a lease shall not be made in consideration of a premium or shall be made for such term of years and subject to such rents and covenants as the Court directs ;

(d) that the whole or any part of the proceeds of the act permitted shall be paid into the Court by the guardian, to be disbursed therefrom or to be invested by the Court on prescribed securities or to be otherwise disposed of as the Court directs.

(4) Before granting permission to a guardian to do an act mentioned in section 29, the Court may cause notice of the application for the permission to be given to any relative or friend of the ward who should, in its opinion receive notice thereof, and shall hear and record the statement of any person who appears in opposition to the application.

32. Where a guardian of the property of ward has been appointed or declared by the Court and such guardian is not the Collector, the Court may, from time to time, by order, define, restrict or extend his powers with

Variation of powers of guardian of property appointed or declared by the Courts.

respect to the property of the ward in such manner and to such extent as it may consider to be for the advantage of the ward and consistent with the law to which the ward is subject.

33. (1) A guardian appointed or declared by the Court may apply by petition to the Court which appointed or declared him for its opinion, advice or direction on any present question respecting the management or administ-

Right of guardian so appointed or declared to apply to the Court for opinion in management of property of ward.

ration of the property of his ward.

(2) If the Court considers the question to be proper for summary disposal, it shall cause a copy of the petition to be served on, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit.

(3) The guardian stating in good faith the facts in the petition and acting upon the opinion, advice or direction given by the Court shall be deemed, so far as regards his own responsibility, to have performed his duty as guardian in the subject-matter of the application.

34. (1) Where a guardian of the property of a ward has been appointed or declared by the Court and such guardian is not the Collector, he shall—

Obligations on guardian of property appointed or declared by the Courts.

(a) if so required by the Court, give a bond as nearly as may be in the prescribed form, to the Judge of the Court to ensure for the benefit of the Judge for the time being, with or without sureties, as may be prescribed, engaging duly to account for what he may receive in respect of the property of the ward ;

(b) if so required by the Court, deliver to the Court, within six months from the date of his appointment or declaration by the Court or within such other time as the Court directs, a statement of the immoveable property belonging to the ward, of the money and other moveable property which he has received on behalf of the ward up to the date of delivering the statement, and of the debts due on that date to or from the ward ;

(c) if so required by the Court, exhibit his accounts in the Court, at such times and in such form as the Court from time to time directs ;

(d) if so required by the Court, pay into the Court at such time as the Court directs the balance due from him on those accounts, or so much thereof as the Court directs ; and

(e) apply for the maintenance, education and advancement of the ward and of such persons as are dependent on him, and for the celebration of ceremonies to which the ward or any of those persons may be a party, such portion of the income of the property of the ward as the Court from time to time directs, and, if the Court so directs, the whole or any part of that property.

(2) The Court shall examine the statement filed under clause (b) and the amount or accounts filed under clause (c) of sub-section (1), with a view to test their accuracy ; and, after such examination shall pass such orders as it thinks fit.

¹[**34-A.** When accounts are exhibited by a guardian of the property of a ward in pursuance of a requisition made under clause (c) of section 34 or otherwise, the Court may appoint a person to audit the accounts and may direct that remuneration for the work be paid out of the income of the property]

Power to award remuneration for auditing accounts.

35. Where a guardian appointed or declared by the Court has given a bond duly to account for what he may receive in respect of the property of his ward, the Court may, on application made by petition and on being satisfied that the engagement of the bond has not been kept, and upon such terms as to security, or providing that any money received be paid into the Court, or otherwise as the Court thinks fit, assign the bond to some proper person, who shall thereupon be entitled to sue on the bond in his own name as if the bond had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon as trustee for the ward, in respect of any breach thereof.

Suit against guardian where administration bond was taken.

36. (1) Where a guardian appointed as declared by the Court has not given a bond as aforesaid, any person, with the leave of the Court, may, as next friend, at any time during the continuance of the minority of the ward, and upon such terms as aforesaid, institute a suit against the guardian, or in case of his death, against his representative, for an account of what the guardian has received in respect of the property of the ward, and may recover in the suit, as trustee for the ward, such amount as may be found to be payable by the guardian or his representative, as the case may be.

Suit against guardian where administration bond was not taken.

(2) The provisions of sub-section (1) shall, so far as they relate to a suit against a guardian, be subject to the provisions of order XXXII, rules 1 and 4 of the First Schedule to the Code of Civil Procedure as amended by this Act.

37. Nothing in either of the two last foregoing sections shall be construed to deprive a ward or his representative of any remedy against his guardian, or the representative of the guardian, which, not being expressly provided in either of those sections, any other beneficiary or his representative would have against his trustee or the representative of the trustee.

General liability of guardian as trustee.

Termination of Guardianship.

38. On the death of one of two or more joint guardians, the guardianship continues to the survivor or survivors until a further appointment is made by the Court.

Right of survivorship among joint guardians.

39. The Court may, on the application of any person interested, or of its own motion, remove a guardian appointed or declared by the Court, or a guardian appointed by will or other instrument, for any of the following causes, namely :—

Removal of guardian.

- (a) for abuse of his trust ;
- (b) for continued failure to perform the duties of his trust ;
- (c) for incapacity to perform the duties of his trust ;
- (d) for ill-treatment, or neglect to take proper care, of his ward ;
- (e) for contumacious disregard of any provision of this Act or of any order of the Court.
- (f) for conviction of an offence implying, in the opinion of the Court, a defect of character which unfits him to be the guardian of his ward ;
- (g) for having an interest adverse to the faithful performance of his duties ;
- (h) for ceasing to reside within the local limits of the jurisdiction of the Court ;
- (i) in the case of a guardian of the property, for bankruptcy or insolvency ;
- (j) by reason of the guardianship of the guardian ceasing or being liable to cease, under the law to which the minor is subject :

Provided that a guardian appointed by will or other instrument, whether he has been declared under this Act or not, shall not be removed—

- (a) for the cause mentioned in clause (g) unless the adverse interest accrued after the death of the person who appointed him, or it is shown that that person made and maintained the appointment in ignorance of the existence of the adverse interest, or
- (b) for the cause mentioned in clause (h) unless such guardian has taken up such a residence as in the opinion of the Court, renders it impracticable for him to discharge the functions of guardian.

40. (1) If a guardian appointed or declared by the Court desires to resign his office, he may apply to the Court to be discharged.

Discharge of guardian.

(2) If the Court finds that there is sufficient reason for the application, it shall discharge him, and, if the guardian making the application is the Collector and ¹[the Government] approves of his applying to be discharged, the Court shall in any case discharge him.

41. (1) The powers of a guardian of the person
 Cessation of authority of guardian. cease—

- (a) by his death, removal or discharge ;
- (b) by the Court of Wards assuming superintendence of the person of the ward ;
- (c) by the ward ceasing to be a minor ;
- (d) in the case of a female ward, by her marriage to a husband who is not unfit to be guardian of her person or, if the guardian was appointed or declared by the Court, by her marriage to a husband who is not, in the opinion of the Court, so unfit ; or,
- (e) in the case of a ward whose father was unfit to be guardian of the person of the ward, by the father ceasing to be so or, if the father was deemed by the Court to be so unfit, by his ceasing to be so in the opinion of the the Court.

(2) The powers of guardian of the property cease :—

- (a) by his death, removal or discharge ;
- (b) by the Court of Wards assuming superintendence of the property of the ward, or
- (c) by the ward ceasing to be a minor.

(3) When for any cause the powers of a guardian cease, the Court may require him or, if he is dead, his representative to deliver as it directs any property in his possession or control belonging to the ward or any accounts in his possession or control relating to any past or present property of ward.

(4) When he has delivered the property or accounts as required by the Court, and the Court has after examination found the accounts to be correct, the Court may declare him to be discharged from his liabilities save as regards any fraud which may subsequently be discovered.

42. When a guardian appointed or declared by Court is discharged, or under the law to which the ward is subject, ceases to be entitled to act, or any such guardian or a guardian appointed by will or other instrument is removed or dies, the Court, of its own motion or on application under Chapter II, may, if the ward is still a minor, appoint or declare another guardian of his person or property, or both, as the case may be.

Appointment of successor to guardian dead, discharged or removed.

¹ See footnote under section 11.

CHAPTER IV.

SUPPLEMENTAL PROVISIONS.

43. (1) The Court may, on the application of any person interested or of its own motion, make an order regulating the conduct or proceedings of any guardian appointed or declared by the Court.

Orders for regulating conductor proceedings of guardians. and enforcement of those orders.

(2) Where there are more guardians than one of a ward, and they are unable to agree upon a question affecting his welfare, any of them may apply to the Court for its direction, and the Court may make such order respecting the matter in difference as it thinks fit.

(3) Except where it appears that the object of making an order under sub-section (1) or sub-section (2) would be defeated by the delay, the Court shall, before making the order, direct notice of the application therefor or of the intention of the Court to make it, as the case may be, to be given, in a case under sub-section (1) to the guardian or, in a case under sub-section (2), to the guardian who has not made the application.

(4) In case of disobedience to an order made under sub-section (1) or sub-section (2) the order may be enforced in the same manner as an injunction granted under Order XXIX, rules 1 and 2 of the First Schedule to the Code of Civil Procedure, in a case under sub-section (1), as if the ward were the plaintiff and the guardian were the defendant or, in a case under sub-section (2), as if the guardian who made the application were the plaintiff and the other guardian were the defendant.

(5) Except in a case under sub-section (2), nothing in this section shall apply to a Collector who is as such a guardian.

44. If, for the purpose or with the effect of preventing the Court from exercising its authority with respect to a ward, a guardian appointed or declared by the Court removes the ward from the limits of the jurisdiction of the Court in contravention of the provisions of section 26, he shall be liable, by order of the Court, to fine not exceeding one thousand rupees, or to imprisonment in the civil jail for a term which may extend to six months.

Penalty for removal of ward from jurisdiction

45. (1) In the following cases, namely :—

Penalty for contumacy.

(a) if a person having the custody of a minor fails to produce him or cause him to be produced in compliance with a direction under section 12, sub-section (1), or to do

his utmost to compel the minor to return to the custody of his guardian in obedience to an order under section 25, sub-section (1), or

(b) if a guardian appointed or declared by the Court fails to deliver to the Court, within the time allowed by or under clause (1) (b) of section 34, a true and accurate statement required under that clause, or to exhibit true and accurate accounts in compliance with a requisition under clause (1) (c) of that section, or to pay into the Court the balance due from him on those accounts in compliance with a requisition under clause 1) (d) of that section or

(c) if a person who has ceased to be a guardian or the representative of such a person, fails to deliver any property or accounts in compliance with a requisition under section 41, sub-section (3),

the person, guardian or representative, as the case may be, shall be liable, by order of the Court, to fine not exceeding one hundred rupees and in case of recusancy to further fine not exceeding ten rupees for each day after the first during which the default continues, and not exceeding five hundred rupees in the aggregate, and to detention in the civil jail until he undertakes to produce the minor or cause him to be produced or to compel his return, or to deliver the statement or to exhibit the accounts, or to pay the balance, or to deliver the property or accounts, as the case may be.

(2) If a person who has been released from detention on giving an undertaking under sub-section (1) fails to carry out the undertaking within the time allowed by the Court, the Court, may cause him to be arrested and re-committed to the civil jail.

46. (1) The Court may call upon the Collector, or upon Reports by Collectors and Sub-ordinate Court. any Court subordinate to the Court, for a report on any matter arising in any proceeding under this Act and treat the report as evidence.

(2) For the purpose of preparing the report the Collector or the Judge of the subordinate Court, as the case may be, shall make such inquiry as he deems necessary, and may for the purposes of the inquiry exercise any power of compelling the attendance of witness to give evidence or produce a document which is conferred on a Court by the Code of Civil Procedure.

47. An appeal shall lie to the High Court from an order made by a '[* *] Court,—

Order appealable.

(a) under section 7, appointing or declaring or refusing to appoint or declare a guardian; or,

- (b) under section 9, sub-section (2), returning an application ; or,
- (c) under section 25, making or refusing to make an order for the return of a ward to the custody of his guardian ; or,
- (d) under section 26, refusing leave for the removal of a ward from the limits of the jurisdiction of the Court, or imposing conditions with respect thereto; or,
- (e) under section 28 or section 29, refusing permission to guardian to do an act referred to in the section ; or,
- (f) under section 32, defining, restricting or extending the powers of a guardian ; or,
- (g) under section 39, removing to discharge a guardian ; or,
- (h) under section 40, refusing to discharge a guardian or,
- (i) under section 43, regulating the conduct or proceeding of a guardian or settling a matter in difference between joint guardians, or enforcing the order ; or,
- (j) under section 44 or section 45, imposing a penalty.

48. Save as provided by the last foregoing section and by section 115 of the Code of Civil Procedure, *Finality of other orders.* an order made under this Act shall be final; and shall not be liable to be contested by suit or otherwise.

49. The costs of any proceeding under this Act, *Costs.* including the costs of maintaining a guardian or another person in the civil jail, shall, subject to any rules made by the High Court under this Act be in the discretion of the Court in which proceeding is had.

50. (1) In addition to any other power to make rules conferred expressly or impliedly by this Act *Power of High Court to make rules.* the High Court may from time to time make rules consistent with this Act,

- (a) as to the matters respecting which, and the time at which reports should be called for from Collectors and subordinate Courts;
- (b) as to the allowances to be granted to, and the security to be required from guardians and the cases in which such allowances should be granted;
- (c) as to the procedure to be followed with respect to applications of guardians for permission to do acts referred to in sections 28 and 29 ,

(d) as to the circumstances in which such requisitions as are mentioned in clauses (a), (b), (c) and (d) of section 34 should be made;

(e) as to the preservation of statements and accounts delivered and exhibited by guardian;

(f) as to the inspection of those statements and accounts by persons interested;

¹[(ff) as to the audit of accounts under section 34-A, the class of persons who should be appointed to audit accounts, and the scales of remuneration to be granted to them;]

(g) as to the custody of money, and securities for money, belonging to wards;

(h) as to the securities on which money belonging to wards may be invested;

(i) as to the education of wards for whom guardians, not being Collectors, have been appointed or declared by the Court; and,

(j) generally, for the guidance of the Courts in carrying out the purposes of this Act.

(2) Rules under clauses (a) and (i) of sub-section (1) shall not have effect until they have been approved by His Highness, nor shall any rule under this section have effect until it has been published in the Jammu and Kashmir Government Gazette.

51. A guardian appointed by holding a certificate of administration from a Civil Court under any enactment repealed by this Act shall, save as may be prescribed, be subject to the provisions of this Act, and of the rules made under it, as if he had been appointed or declared by the Court under Chapter II.

Applicability of Act to guardians already appointed by Court.

THE GENERAL CLAUSES ACT, 1977.**Act No. xx of 1977.****CONTENTS.****SECTION.****SECTION.***Preliminary.*

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2. Omitted.

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3. Definitions.

4. Omitted.

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5. Omitted.

6. Effect of repeal.

7. Revival of repealed enactments.

8. Construction of references to repealed enactments.

9. Commencement and termination of time.

10. Computation of time.

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12. Duty to be taken *pro rata* in enactments.

13. Gender and number.

Powers and Functionaries.

14. Powers conferred on the Government to be exercisable from time to time.

15. Power to appoint to include power to appoint *ex officio*.

16. Power to appoint to include power to suspend or dismiss.

17. Substitution of functionaries.

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19. Official chief and subordinates.

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20. Construction of orders, etc., issued under enactments.

21. Power to make, to include power to add to, amend, vary or rescind, orders, rules or bye-laws.

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27. Meaning of service by post.

28. Citation of enactments.

29. Saving for previous enactments, rules and bye-laws.

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THE GENERAL CLAUSES ACT, 1977.**Act No. XX Of 1977.**

[Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No. 8372, dated 11th September, 1920 and State Council Resolution No. 1, dated 8th April 1925. (Notification No. 14-L/81).]

An Act for shortening the language used in Laws in force in the State and for other purposes.

WHEREAS it is expedient to shorten the language used in laws in force in the State and to make certain provisions relating to such laws ; It is hereby enacted as follows :—

Preliminary.

1. Omitted.
2. Omitted.

General Definitions.

3. In this Act, and in all enactments now in force or hereafter to be introduced, unless there is anything repugnant in the subject or context,—

Definitions.

(1) "abet", with its grammatical variations and cognate expressions, shall have the same meaning as in the ¹Ranbir Dand Bidhi :

"Abet."

(2) "act", used with reference to an offence or a civil wrong, shall include a series of acts and words which refer to acts done extend also

"Act."

to illegal omissions :

(3) "affidavit" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing :

"Affidavit"

(4) "barrister" shall mean a barrister of England or Ireland, or the member of the Faculty of Advocates in Scotland :

"Barrister."

(5) "British India" shall mean all territories and places within His Majesty's dominions which are for the time being governed by His Majesty through the Governor General of India or through any

"British India."

¹Short title, extent and commencement are given and regulated by Act IV of 1977, Punjab Penal Code.

Governor or other officer subordinate to the Governor General of India :

(6) "British possession" shall mean any part of His Majesty's dominions, exclusive of the United kingdom, and, where part of those dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one British possession :

"British possession." (7) "Chapter" shall mean a Chapter of the Act or Regulation in which the word occurs :

"Chapter."

¹(7a) Repealed.

(8) "Collector" shall mean, in the provinces of Jammu and Kashmir, the Governor of the province and elsewhere the Chief officer-in-charge of the Revenue administration of an area :

"Collector."

(9) "Commencement", used with reference to an Act or Regulation, shall mean the day on which the Act or Regulation comes into force :

"Commencement."

(10) "District Judge" shall mean the Judge of a principal Civil Court of original jurisdiction, but shall not include the High Court in the exercise of its ordinary or extraordinary original civil jurisdiction :

"District Judge".

(11) "document" shall include any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means which is intended to be used, or which may be used, for the purpose of recording that matter :

"Document."

(12) "Father", in the case of any one whose personal law permits adoption, shall include an adoptive father :

"Father".

²(13) "Financial year" shall mean the Fasli year commencing on the first day of Katik and ending on the last day of Assuj.

"Financial year."

(14) A thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not :

"Good faith"

³(15) "Government" or "the Government" shall mean "Council" as defined in 'Regulation I of 1991.] ✓

"Government."

¹Sub-section (7a) (definition of "Chief Judge") repealed *vide* Notification No. 3-L/85 published in Government Gazette dated 8th Bhadon 1985.

²Sub-section (13) Substituted *vide* Notification No. 7-L/84 published in Government Gazette dated 17th Jeth, 1984.

³Sub-section (15) substituted *vide* Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

⁴New Act XLV of 1996.

(16) "Government of India" shall mean the Governor General in Council or, during the absence of the Governor General from his Council, the President in Council, or the Governor General alone, as regards the powers which may be lawfully exercised by them or him respectively :

(17) "His Majesty" or "the King" shall include His "His Majesty" or "the King." successors.

¹(18) Repealed.

(19) "Immoveable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth :

(20) "Imprisonment" shall mean imprisonment of either description as defined in the "Ranbir Dand Bidhi."

9 (21) "India" shall mean British India, together with any territories of any Native Prince or Chief under the suzerainty of His Majesty exercised through the Governor General of India or through any Governor or other officer subordinate to the Governor General of India : 9

(22) "Local authority" shall mean a municipal committee, or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund :

(23) "Magistrate" shall include every person exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure for the time being in force :

2[(24) "Minister" shall include the Chief Justice and a Judge of the High Court of Judicature.]

(25) "Month" shall mean a month reckoned according to the Bikrami calendar :

(26) "Moveable property" shall mean property of every description, except immoveable property :

(27) "Oath" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing :

¹ Sub-section (18) (definition of "High Court") repealed vide Notification No. 3-L/85 published in Government Gazette dated 8th Bhadon 1985.

² Sub-section 24 substituted vide Notification No. 3-L/85 published in Government Gazette dated 8th Bhadon 1985.

³ Ranbir Penal Code.

(28) "Offence" shall mean any act or omission made punishable by any law for the time being in force :
 "Offence"

(29) "Part" shall mean a Part of the Act or Regulation in which the word occurs :
 "Part"

(30) "Person" shall include any company or association or body of individuals, whether incorporated or not :
 "Person"

(31) "Political Agent" shall include—
 "Political Agent".

(a) the principal officer representing the British Government in any territory or place beyond the limits of British India, and

(b) any officer of the Government of India or of any British Local Government appointed by the Government of India or the British Local Government to exercise all or any of powers of a Political Agent for any place not forming part of British India under the law for the time being in force relating to foreign jurisdiction and extradition :

(32) "public nuisance" shall mean a public nuisance as defined in the 'Ranbir Dand Bidhi'.
 "Public nuisance".

(33) "registered", used with reference to a document, shall mean registered in the State under the law for the time being in force for the registration of documents :
 "Registered"

(34) "rule" shall mean a rule made in exercise of a power conferred by any enactment, and shall include a regulation made as a rule under any enactment :
 "Rule".

(35) "schedule" shall mean a schedule to the Act or Regulation in which the word occurs :
 "Schedule"

(36) "section" shall mean a section of the Act or Regulation in which the word occurs :
 "Section".

(37) "Boat" shall include every description of vessel used in navigation not exclusively propelled by oars :
 "Boat".

(38) "sign" with its grammatical variations and cognate expressions, shall, with reference to a person who is unable to write his
 "Sign".

name, include "mark" with its grammatical variations and cognate expressions :

"Son". (39) "son" in the case of any one whose personal law permits adoption, shall include an adopted son :

"The State". (39a) "The State" means all territories and places which are, for the time being ruled by His Highness the Maharaja Sahib Bahadur :

"Sub-section". (40) "sub-section" shall mean a sub-section of the section in which the word occurs :

"Swear". (41) "swear", with its grammatical variations and cognate expressions, shall include affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing ;

"Vessel". (42) "vessel" shall include any boat or any other description of vessel used in navigation ;

"Will". (43) "will" shall include a codicil and every writing making a voluntary posthumous disposition of property ;

"Writing". (44) expressions referring to "writing" shall be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form : and

"Year". (45) "year" shall mean a year reckoned according to the Bikrami calendar.

4. Omitted.

General Rules of Construction.

5. Omitted.

6. Where this Act, or any Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—

(a) revive anything not in force or existing at the time at which the repeal takes effect ; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder ; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed ; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so

repealed ; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid ; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Regulation had not been passed.

7. In any Act made after the commencement of this Act, it shall be necessary, for the purpose of reviving, either wholly or partially, any enactment wholly or partially repealed, expressly to state that purpose.

8. Where this Act, or any Act made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as reference to the provision so re-enacted.

9. In any Act made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "to".

10. Where, by any Act made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open :

Provided that nothing in this section shall apply to any act or proceeding to which the Limitation Act applies.

11. In the measurement of any distance, for the purposes of any Act made after the commencement of this Act, that distance shall, unless a different intention appears, be measured in a straight line on a horizontal plane.

12. Where, by any enactment now in force or hereafter to be in force, any duty of customs or excise, or in the nature thereof, is leviable

on any given quantity, by weight, measure or value of any goods or merchandize, then a like duty is leviable according to the same rate on any greater or less quantity.

13. In all Acts and Regulations, unless there is anything repugnant in the subject or context,—
Gender and number.

(1) words importing the masculine gender shall be taken to include females ; and

(2) words in the singular shall include the plural, and *vice versa*.

Powers and Functionaries.

14. Whereby, by any Act made after the commencement of this Act, any power is conferred on the Government, then that power may be exercised from time to time as occasion requires.
Powers conferred on the Government to be exercisable from time to time.

15. Where, by any Act or Regulation, a power to appoint any person to fill any office or execute any function is conferred, then, unless it is otherwise expressly provided, any such appointment, if it is made after the commencement of this Act may be made either by name or by virtue of office.
Power to appoint to include powers to appoint *ex-officio*.

16. Where, by any Act or Regulation, a power to make any appointment is conferred, then, unless a different intention appears, the authority having power to make the appointment shall also have power to suspend or dismiss any person appointed by it in exercise of that power.
Power to appoint to include power to suspend or dismiss.

17. In any Act made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, to mention the official title of the officer at present executing the function, or that of the officer by whom the functions are commonly executed.
Substitution of functionaries.

18. In any Act made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the relation of a law to the successors of any functionaries or of corporations having perpetual succession, to express its relation to the functionaries or corporations.
Successors.

19. In any Act made after the commencement of this Act, it shall be sufficient, for the purpose of expressing that a law relative
Official chiefs and subordinates.

to the chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior, to prescribe the duty of the superior.

Provisions as to Orders, Rules, etc. made under Enactments.

20. Where, by any Act or Regulation, a power to issue any notification order, scheme rule, form, or by-law is conferred, then expressions used in the notification, order, scheme, rule, form or by-law, if it is made after the commencement of this Act, shall unless there is anything repugnant in the subject or context, have the same respective meanings as in the Act or Regulation conferring the powers.

Construction of orders, etc., issued under enactments.

21. Where, by any Act or Regulation, a power to issue notifications orders, rules, or by-laws is conferred, then that power includes a power, exerciseable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications orders, rules or bye-laws so issued.

Power to make, to include power to add to, amend, vary or rescind, orders, rules or bye-laws.

22. Where, by any Act or Regulation which is not to come into force immediately on the passing thereof, a power is conferred to rules or by-laws, or to issue orders with respect to the application of the Act or Regulation, or with respect to the establishment of any Court or office or the appointment of any Judge or officer thereunder, or with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, any thing is to be done under the Act or Regulation, then that power may be exercised at any time after the passing of the Act or Regulation; but rules, bye-laws or orders so made or issued shall not take effect till the commencement of the Act or Regulation.

Making of rules or bye-laws and issuing of orders between passing and commencement of enactment.

23. Where, by any Act or Regulation, a power to make rules or bye-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions shall apply namely:—

Provisions applicable to making of rules or bye-laws after previous publication.

(1) the authority having power to make the rules or bye-laws shall, before making them, publish a draft of the proposed rules or bye-laws for the information of persons likely to be effected thereby;

(2) the publication shall be made in such manner as that

authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as His Highness prescribes;

(3) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;

(4) the authority having power to make the rules or bye-laws, and where the rules or bye-laws are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider any objection or suggestion which may be received by the authority having power to make the rules or bye-laws from any person with respect to the draft before the date so specified;

(5) the publication in the Government Gazette of a rule or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-law has been duly made.

24. Where any Act or Regulation is, after the commencement of this Act, repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided, any appointment, notification, order, scheme, form or bye-law, made or issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been made or issued under the provisions so re-enacted, unless and until it is superseded by any appointment, notification order, scheme, rule, form or bye-law made or issued under the provisions so re-enacted and when any Act or Regulation which, by a notification, has been extended to any local area, has, by a subsequent notification, been withdrawn from and re-extended to such area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re-enacted in such area or part within the meaning of this section.

Continuation of orders, etc., issued under enactments repealed and re-enacted.

Miscellaneous.

25. ¹Sections 50 to 56 of the Ranbir Rand Bidhi and the provisions of the Code of Criminal Procedure for the time being in force in relation to the issue and the execution of warrants for the levy of fines shall apply to all fines imposed under any Act, Regulation, rule or bye-law unless the Act, Regulation, rule, or bye-law contains an express provision to the contrary.

¹Sections 62-69 of the Ranbir Penal Code.

Recovery of fines.

26. Where an act, or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.

27. Where any Act made after the commencement of this Act authorises or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

28. (1) In any Act or Regulation, and in any rule, bye-law, instrument or document, made under, or with reference to any such Act or Regulation, any enactment may be cited by reference to the title or short title (if any) conferred thereon or by reference to the number and year thereof, and any provision in an enactment may be cited by reference to the section or sub-section of the enactment in which the provision is contained.

(2) In this Act and in any Act made after the commencement of this Act, a description or citation of a portion of another enactment shall, unless a different intention appears, be construed as including the word, section or other part mentioned or referred to as forming the beginning and as forming the end of the portion comprised in the description or citation.

29. The provisions of this Act respecting the construction of Act rules or by-laws made after the commencement of this Act shall not affect the construction of any Act, Regulation, rules or by-laws made before the commencement of this Act, although the Act, Regulation, rule or by-law is continued or amended by an Act rule or by-law made after the commencement of this Act.

30. In this Act the expression Act or Regulation, wherever it occurs, and the word 'Act' in clauses ¹[(7), (9), (29), (35) and (36)] of section 3 and in section 25 shall be deemed to include an ordinance made and promulgated by His Highness.

¹In section 30 words figures and brackets substituted for "(9), (12), (33), (43) and (50)" vide Act II of 1997.

THE GLANDERS AND FARCY ACT, 1977**Act No. XXI of 1977.****CONTENTS.****SECTION.****SECTION.**

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|---|---|
| 1. Omitted. | 11. Prohibition against removal, without licence, of horse which has been with diseased horse. |
| 2. Definition of "diseased". | 12. Vexatious entries, searches and seizures. |
| 3. Application of Act to local areas by the Government. | 13. Penalty for refusing to comply with notice under section 9, or for moving horse contrary to section 11. |
| 4. The Government to appoint Inspectors. | 14. Power to make rules. |
| 5. Power of entry and search. | 15. Appointment of same person to be both Inspector and Veterinary Practitioner. |
| 6. Power of seizure. | 16. Protection to persons acting under Act. |
| 7. Horse to be examined by Veterinary practitioner. | 17. Omitted. |
| 8. Horse to be destroyed if found diseased, otherwise restored. | |
| 9. When horse diseased, place where it has been to be disinfected, etc. | |
| 10. Owner or person in charge of diseased horse to give notice. | |

THE GLANDERS AND FARCY ACT, 1977.**ACT NO. XXI OF 1977.**

[Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No. 8,372, dated 11th September, 1920 and State Council Resolution No. 1, dated 8th April, 1925, (Notification No. 14-L/81).]

An Act to consolidate and amend the law relating to Glanders and Farcy.

WHEREAS it is expedient to consolidate and amend the

law relating to glanders and farcy; It is hereby enacted as follows:—

¹1. Omitted.

2. (1) In this Act, unless there is anything repugnant in the subject or context, “diseased” means ^{Definition of “diseased”.} affected with glanders or farcy or any other dangerous epidemic disease among horses which ²[the Government] may, by notification in the Jammu and Kashmir Government Gazette, specify in this behalf.

(2) The provisions of this Act relating to horses shall apply also to asses and mules.

3. ^{Application of Act to local areas by the Government.} ³[The Government] may, by notification in the Jammu and Kashmir Government Gazette, apply this Act or any provision of this Act so far as all or any of the diseases mentioned in or specified in a notification under section 2, sub-section (1) are concerned to any local area, to be specified in such notification, within the State.

4. (1) When this Act has been so applied to a local area, ^{The Government to appoint Inspectors.} ²[the Government] may, by notification in the Government Gazette, appoint such persons as it thinks fit to be Inspectors under this Act and to exercise and perform, within the whole of the local area or such portions thereof as it may prescribe, the powers conferred and the duties imposed by this Act on such officers.

(2) Every person so appointed shall be deemed to be a public servant within the meaning of the ³Ranbir Dand Bidhi.

5. Within the local limits for which he is so appointed, ^{Power of entry and search.} any such Inspector as aforesaid may, subject to such rules as ²[the Government] may make in this behalf, enter and search any field, building or other place for the purpose of ascertaining whether there is therein any horse which is diseased.

6. Within such limits as aforesaid, the Inspector may ^{Power of seizure.} seize any horse which he has reason to believe to be diseased.

7. (1) On any such seizure as aforesaid, the Inspector ^{Horse to be examined by Veterinary Practitioner.} shall cause the horse seized to be examined as soon as possible by such Veterinary Practitioner as ²[the Government] may appoint in this behalf:

¹Short title, extent and commencement are given and regulated by Act IV of 1977.

²In sections 2, 3, 4, 5, 7, 8, 9, 10, 14 and 15, the words “the Government” substituted for the words “His Highness” vide Act X of 1996 published in Government Gazette dated 15th Bhadon 1996

³Ranbir Penal Code.

Provided that, when the Inspector is also a Veterinary Practitioner so appointed, he may make the examination himself.

(2) For the purposes of the examination, the Veterinary Practitioner may submit the horse to any test or tests which ¹[the Government] may prescribe.

8. (1) If the Veterinary Practitioner certifies in writing that the horse is diseased, the Inspector shall cause the same to be immediately destroyed:

Horse to be destroyed if found diseased: otherwise restored.

Provided that, in the case of any disease other than glanders or farcy, horses certified to be diseased as aforesaid may, subject to any rules which ²[the Government] may make in this behalf, be either destroyed or otherwise treated or dealt with as the Veterinary Practitioner may deem necessary.

(2) If, after completing the examination, the Veterinary Practitioner does not certify that the horse is diseased, the Inspector shall at once deliver the same to the person entitled to the possession thereof.

9. (1) When any diseased horse has been in any building shed or other enclosed place, or in any open lines, the Inspector may issue a notice to the owner of the building, shed, place or lines, or to the person in charge thereof, directing him to have the same disinfected and the internal fittings thereof, or such other things found therein or near thereto as ¹[the Government] may by rule prescribe, destroyed.

When horse diseased, place where it has been to be disinfected, etc.

(2) On the failure or neglect of such owner or other person as aforesaid to comply with the notice within a reasonable time, the Inspector shall cause the building, shed, place or lines to be disinfected and the fittings or other things to be destroyed, and the expense (if any) thereby incurred, may be recovered from the owner or other person as if it were a fine.

10. The owner or any person in charge of a diseased horse shall give immediate information of the horse being diseased to the Inspector or to such authority as ¹[the Government] may appoint in this behalf.

Owner or person in charge of diseased horse to give notice.

11. No person in charge of any horse which has been in the same field, building or place as, or in contact with, a diseased horse, shall remove such horse except in good faith for the purpose of preventing infection, or under a licence to be granted by the Inspector and subject to

Prohibition against removal, without licence, of horse which has been with diseased horse.

the conditions of the licence.

12. (1) Whoever, being an Inspector appointed under this Act vexatiously and unnecessarily enters or searches any field, building or other place, or seizes or detains any horse on the pretence that it is diseased, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

(2) No prosecution under this section shall be instituted after the expiry of three months from the date on which the offence has been committed.

13. Whoever refuses or neglects to comply with any notice issued by the Inspector under section 9, or removes any horse in contravention of section 11, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both.

14. (1) ¹[The Government] may make rules to carry out the purposes and objects of this Act.

Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules as aforesaid may—

(a) regulate entries, searches and seizures by Inspectors under this Act;

(b) regulate the use of tests and the isolation of horses subjected thereto, and provide for recovering the expense of detaining, isolating and testing horses from the owners or persons in charge thereof as if it were a fine;

(c) regulate the destruction or treatment, as the case may be, of horses certified under section 8 to be diseased, and the disposal of the carcasses of diseased horses;

(d) regulate the disinfecting of buildings and places in which diseased horses have been, and prescribe what things found therein or near thereto shall be destroyed; and

(e) regulate the grant of licences under section 11 and the conditions on which those licences shall be granted.

(3) All rules under this section shall be published in the Jammu and Kashmir Government Gazette, and, on such publication, shall have effect as if enacted by this Act.

(4) In making any rule under this section, ¹[the Government] may direct that a breach of it shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both,

15. Any Veterinary Practitioner may be appointed by ^{Appointment of same person to be both Inspector and Veterinary Practitioner.} [the Government] to be both Inspector and Veterinary Practitioner for all or any of the purposes of this Act or of any rule thereunder.

16. No suit, prosecution or other legal proceeding shall ^{Protection to persons acting under Act.} lie against any person for any thing which is, in good faith, done or intended to be done under this Act.

17. Omitted.

THE LEGAL REPRESENTATIVES SUITS ACT, 1977.

Act No. XXII of 1977.

CONTENTS.

Preamble.

SECTION.

- | | |
|--|---|
| 1. Executor may sue and be sued in certain cases for wrongs committed in the life time of a deceased person. | 2. Death of either party not to abate suit.

Proviso. |
|--|---|

THE LEGAL REPRESENTATIVES SUITS ACT, 1977.

Act No. XXII of 1977.

[Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No. 8372, dated 11th September, 1920 and State Council Resolution No. 1, dated 8th April, 1925, (Notification No. 14-L/81).]

An Act to enable Executors, Administrators or Representatives to sue and be sued for certain wrongs.

WHEREAS it is expedient to enable executors, administrators or representatives in certain cases to sue and be sued in respect of certain

Preamble.

¹See footnote under section 2.

²Short title, extent and commencement are given and regulated by Act IV of 1977.

wrongs which, according to the present law, do not survive to or against such executors, administrators or representatives ;—
It is enacted as follows :—

1. An action may be maintained by the executors, administrators or representatives of any person deceased, for any wrong committed in the life-time of such person, which has occasioned pecuniary loss to his estate, for which wrong an action might have been maintained by such person, so as such wrong shall have been committed within one year before his death, and the damages, when recovered, shall be part of the personal estate of such person ;

and further, an action may be maintained against the executors or administrators or heirs or representatives of any person deceased for any wrong committed by him in his life-time for which he would have been subject to an action, so as such wrong shall have been committed within one year before such person's death, and the damages to be recovered in such action shall, if recovered against an executor or administrator bound to administer according to law, be payable in the like order of administration as the simple contract debts of such person.

2. No action commenced under the provisions of this Act shall abate by reason of the death of either party, but the same may be continued by or against the executors, administrators or representatives of the party deceased : Provided that, in any case in which any such action shall be continued against the executors, administrators or representatives of a deceased party, such executors, administrators or representatives may set up a want of assets as a defence to the action, either wholly or in part, in the same manner as if the action had been originally commenced against them.

Executors may sue and be sued in certain cases for wrongs committed in the life-time of a deceased person.

Death of either party not to abate suit.

Proviso.

THE LEGAL PRACTITIONERS ACT, 1977.**Act No. XXIII of 1977.****C O N T E N T S.***Preamble.***SECTION.****SECTION.****CHAPTER I****PRELIMINARY.**

1. Short title, commencement and extent.
2. Saving of rules and appointments etc.
3. Interpretation clause.

CHAPTER II.**ADVOCATES AND VAKILS.**

4. Vakils and advocates.
5. Advocates, vakils or pleaders not on the roll of the High Court.

CHAPTER III.**OF PLEADERS.**

6. Power to make rules as to qualifications, etc. of pleaders. Publication of rules.
7. Certificates to pleaders.
8. Pleaders on enrolment may practise in Courts and Revenue offices.
9. Omitted.
10. No person to practise as pleader unless qualified.

11. Omitted.

12. Suspension and dismissal of pleaders convicted of criminal offence.

13. Suspension and dismissal of pleaders guilty of unprofessional conduct.

14. Procedure when charge of unprofessional conduct is brought in subordinate Court or Revenue office.

Suspension pending investigation.

15. Power to call for record in case of acquittal under section 14.

16. Omitted.

CHAPTER IV.

- 17 to 24. Omitted.

CHAPTER V.**OF CERTIFICATES.**

25. Fee for certificates.
26. Dismissed practitioners to surrender certificate.

SECTION.

SECTION.

CHAPTER VI

OF THE REMUNERATION OF LEGAL
PRACTITIONER.

27. High Court and Revenue
Minister to fix fees on civil
and revenue proceedings.

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PENALTIES.

32. Any persons illegally practis-
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33. On suspended or dismissed
pleader, failing to deliver
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34. On suspended or dismissed
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37. High Court to appoint
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38. Omitted.

39. Omitted.

40. Pleaders, not to be suspended
or dismissed without being
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41. Repealed.

42. Saving of rules issued by
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THE FIRST SCHEDULE—Omitted.

THE SECOND SCHEDULE—
VALUE OF STAMPS FOR CERTI-
FICATES.

THE LEGAL PRACTITIONERS ACT, 1977.

Act No. XXIII of 1977.

*[Sanctioned by His Highness the Maharaja Sahib Bahadur
per Chief Minister's endorsement No. 8372, dated 11th September,
1920 and State Council Resolution No. 1, dated 8th April, 1925,
(Notification No. 14-L/81).]*

**An Act to consolidate and amend the Law relating
to Legal Practitioners.**

WHEREAS it is expedient to consolidate and amend the
law relating to legal Practitioners in the
Preamble.

State ; It is hereby enacted as follows:—

CHAPTER I.

- PRELIMINARY.

1. This Act may be called the Legal Practitioners Act 1977 and shall come into force on 1st day of Baisakh 1978.

Short title, commencement and extent.

2. All rules and appointments made, penalties prescribed, fees fixed, persons admitted, names enrolled, certificates issued, sanctions given and orders passed under any rules heretofore in force shall be deemed to be respectively made, prescribed, fixed, admitted, enrolled, issued, given and passed under this Act.

Saving of rules and appointments, etc.

3. In this Act unless there be something repugnant in the subject or context—

Interpretation clause.

“Judge” means the the presiding judicial officer in every Civil and Criminal Court, by whatever title he is designated ;

“Subordinate Court” means all Courts subordinate to the High Court, including Courts of Small Causes:

“Revenue Office” includes all Courts other than Civil Courts trying suits under any Act for the time being in force relating to landholders and their tenants or agents :

“Legal Practitioner” means advocate, vakil, pleader or a Revenue agent.

¹ [(a) “Tout” means a person, who procures, in consideration of any remuneration moving from any legal practitioner, the employment of the legal practitioner in any legal business, or who proposes to any legal practitioner or to any person interested in any legal business to procure in consideration of any remuneration moving from either of them the employment of the legal practitioner in such business ; or

(b) who for the purposes of such procurement frequents the precincts of Civil or Criminal Courts or of Revenue Offices or railway stations landing stages, lodging places or other places of public resort.]

CHAPTER II.

ADVOCATES AND VAKILS.

¹[4. Every person now or hereafter entered as an advocate or vakil on the roll of the High Court under ²His Highness' order No. I dated 20th March 1928, constituting the High Court of Judicature shall be entitled to practise in all Civil and Criminal Courts of the State and subject to any law or rules for the time being in force in all Revenue Courts and offices of the State provided that no such vakil shall be entitled to practise under this section before the High Court on its original side.]

³5. No advocate, vakil or pleader, not on the roll of the High Court, shall be allowed to appear, act or plead in any State Court or Revenue office except—

(i) on payment in advance of fee prescribed in this behalf; and

(ii) with the previous sanction of the High Court or of the Revenue Minister if the case be pending in a Revenue Court or office of the Revenue Minister ⁴[***].

CHAPTER III.

OF PLEADERS.

6. The High Court may, from time to time, make rules consistent with this Act as to the following matters (namely):

⁵Power to make rules as to qualifications, etc. of pleaders.

(a) the qualifications, admission and certificates of proper persons to be pleaders of the subordinate Courts and of the Revenue Offices;

(b) Omitted.

(c) the fees to be paid for the examination and admission of such persons; and

(d) the suspension and dismissal of such pleaders.

¹Section 4 substituted by Notification 19-L/86 published in Government Gazette dated 7th Oct 1986.

²Now Act XIV of 1996.

³Proviso to section 5 (ii) repealed by Notification 19-L/86 published in Government Gazette dated 7th Oct 1986.

Publication of rules. All such rules after approval by ¹[the Government] shall be published in the Jammu and Kashmir Government Gazette, and shall thereupon have the force of law.

Certificate to pleaders. 7. On the admission, under section 6, of any person as a pleader, the High Court shall cause a certificate signed by such officer as the Court, from time to time, appoints in this behalf, to be issued to such person, authorising him to practise up to the end of the current year in the Courts and the Revenue offices, specified therein.

At the expiration of such period, the holder of the certificate, if he desires to continue to practise, shall, subject to any rules consistent with this Act which may, from time to time, be made by the High Court in this behalf be entitled to have his certificate renewed by the High Court.

On every such renewal, the certificate then in possession of such pleader shall be cancelled and retained by the High Court.

Every certificate so renewed shall be signed by the Registrar of the High Court, and shall continue in force up to the end of the current year.

Pleaders on enrolment may practise in Courts and Revenue offices. 8. Every pleader holding a certificate issued under section 7 may apply to be enrolled in any Court or Revenue office mentioned therein and situate within the local limits of the appellate jurisdiction of the High Court; and, subject to such rules consistent with this Act as the High Court or the Revenue Minister may, from time to time, make in this behalf, the presiding Judge or officer shall enrol him accordingly and thereupon he may appear, plead and act in such Court or office and in any Court or Revenue office subordinate thereto.

9. Omitted.

No person to practise as pleader unless qualified. 10. Except as provided by this Act or any other enactment for the time being in force, no person shall practise as a pleader in any Court unless he holds a certificate issued under section 7 and has been enrolled in such Courts or in some Court to which it is subordinate.

11. Omitted.

Suspension and dismissal of pleaders convicted of criminal offence. 12. The High Court may suspend or dismiss any pleader holding a certificate issued under section 7 who is convicted of any criminal offence implying a defect of character which unfits him to be a pleader.

¹ In Section 6 word "the Government" substitute for "His Highness" vide Act X of 1996 published in the Government Gazette dated 15th Bhadon 1996.

13. The High Court may also, after such inquiry as it thinks fit, suspend or dismiss any pleader holding a certificate as aforesaid :—

Suspension and dismissal of pleaders guilty of unprofessional conduct.

(a) who takes instructions in any case except from the party on whose behalf he is retained, or some person who is the recognized agent of such party within the meaning of the Code of Civil Procedure or some servant, relative or friend authorised by the party to give such instructions ; or

(b) who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty ; or

(c) who tenders, gives or consents to the retention out of any fee-paid or payable to him for his services, of any gratification for procuring or having procured the employment in any legal business of himself or any other pleader ; or

(d) who, directly or indirectly, procures or attempts to procure the employment of himself as such pleader through or by the intervention of, any person to whom any remuneration for obtaining such employment has been given by him, or agreed or promised to be so given ; or

(e) who accepts any employment in any legal business through a person who has been proclaimed as a tout under section 36 ; or

(f) for any other reasonable cause.

14. If any such pleader practising in any subordinate Court or in any Revenue office is charged in such Court or office with taking instructions except as aforesaid, or with any such misconduct as aforesaid, the presiding officer shall send him a copy of the charge and also a notice, that on a day to be therein appointed, such charge will be taken into consideration.

Procedure when charge of unprofessional conduct is brought in subordinate Court or Revenue office.

Such copy and notice shall be served upon the pleader at least fifteen days before the day so appointed.

On such day, or on any subsequent day to which the enquiry may be adjourned, the presiding officer shall receive and record all evidence properly produced in support of the charge, or by the pleader and shall proceed to adjudicate on the charge.

If such officer finds the charge established and considers that the pleader should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and shall report the same to the High Court ; and the High Court may acquit, suspend or dismiss the pleader.

Any District Judge, or with his sanction any Judge subordinate to him, any District Magistrate or with his sanction any Magistrate

Suspension pending investigation.

subordinate to him, and any Revenue authority not inferior to a Governor or with the Governor's sanction any Revenue officer subordinate to him may, pending the investigation and the orders of the High Court, suspend from practice any pleader charged before him or it under this section.

Every report made to the High Court under this section shall—

(a) when made by any Civil Judge subordinate to the District Judge, be made through such Judge.

(b) when made by a Magistrate subordinate to the Magistrate of the District, be made through the Magistrate of the District and the Sessions Judge.

(c) when made by a Magistrate of the District, be made through the Sessions Judge.

(d) when made by any Revenue officer subordinate to the Revenue Minister, be made through such Revenue authorities as the Revenue Minister may, from time to time, direct.

Every such report shall be accompanied by the opinion of each Judge, Magistrate or Revenue authority through whom or which it is made.

15. The High Court, in any case in which a pleader has been acquitted under section 14 otherwise than by an order of the High Court, may call for the record and pass such order thereon as it thinks fit.

Power to call for record
in case of acquittal under
section 14.

16. Omitted.

CHAPTER IV.

17 to 24. Omitted.

CHAPTER V.

OF CERTIFICATES.

25. Every certificate, whether original or renewed, issued under this Act shall be written upon stamped paper of the value prescribed therefor in the second schedule hereto annexed (and of such description as ¹[the Government] may, from time to time, prescribe):

Fee for certificates.

¹In section 25 "the Government" substituted for "His Highness" vide Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

Provided that a certificate issued on or after the first day of Katik in any year may be written on stamped paper of half the value so prescribed.

26. When any ¹[legal practitioner] is suspended or dismissed under this Act he shall forthwith deliver up his certificate to the Court or officer at the head of the office before or in which he was practising at the time he was so suspended or dismissed, or to any Court or officer to which the High Court or Revenue Minister (as the case may be) orders him to deliver the same.

CHAPTER VI.

OF THE REMUNERATION OF ¹[LEGAL PRACTITIONER.]

27. The High Court shall, from time to time fix and regulate the fees payable by any party in respect of the fees of his adversary's advocate, pleader, or vakil, upon all proceedings (a) on the appellate side of such Court, and (b) in subordinate Courts.

High Court and Revenue Minister to fix fees on civil and revenue proceedings

The Revenue Minister shall, from time to time fix and regulate the fees payable upon all proceedings in the Revenue offices by any party in respect of the fees of his adversary's advocate, pleader or vakil.

Tables of the fees so fixed shall be published in the Jammu and Kashmir Government Gazette.

28. to 31. ²Repealed.

CHAPTER VII.

PENALTIES.

32. Any person who practises in any Court or Revenue office in contravention of the provision of section 10 shall be liable by order of such Court or the officer at the head of such office, to a fine not exceeding ten times the amount of the stamp required by this Act for a certificate authorising him so to practise in such Court or office, and, in default of payment to imprisonment in the civil jail for a term which may extended to six months.

Any person illegally practising as pleaders.

¹Vide Notification No. 19-L of 1986 published in Government Gazette dated 7th Chet 1986 substituted for "pleader".

²Repealed vide Act No. 7 of 1988, published in Government Gazette dated 18th Har 1988.

He shall also be incapable of maintaining any suit for or enforcing any lien with respect to any fee or reward for or with respect to anything done or any disbursement made by him as pleader, whilst he has been contravening the provisions of either of such sections.

33. Any pleader, failing to deliver up his certificate as required by section 26 shall be liable, by order of the Court, Authority or Officer to which or to whom, or according to whose orders, the delivery should be made, to a fine not exceeding two hundred rupees, and in default of payment, to imprisonment in civil jail for a term which may extend to three months.

34. Any pleader, who under the provisions of this Act, has been suspended or dismissed and who during such suspension or after such dismissal practises as a pleader in any Court or Revenue office, shall be liable, by order of such Court or the officer at the head of such office to a fine not exceeding five hundred rupees and in default of payment to imprisonment in the civil jail for a term which may extend to six months.

35. Every order under section 32, 33 or 34 shall be subject to revision by the High Court where the order has been passed by a subordinate Court and by the Revenue Minister where the order has been passed by an officer subordinate to such Authority.

36. (1) The High Court, every District Judge, Sessions Judge, District Magistrate and every Revenue officer, not being below the rank of a Governor ¹[*] may frame and publish lists of persons proved to their or his satisfaction ²[or to the satisfaction of any subordinate Court,] by evidence of general repute or otherwise, habitually to act as touts and may, from time to time, alter and amend such lists.

(2) No person's name shall be included in any such list until he shall have had an opportunity of showing cause against such inclusion.

²[EXPLANATION.—The passing of a resolution declaring any person to be or not to be a tout by a majority of the members present at a meeting specially convened for the purpose, of an association of persons entitled to practise, as

¹Words "of a district" repealed by Notification 19-1/86 published in Government Gazette dated 17th Oct 1986.

²Words within brackets in section 36, added vide Act. No. 6 of 1988 published in Government Gazette dated 18th Mar 1988.

legal practitioners in any Court or Revenue office, shall be evidence of the general repute of such person for the purposes of this sub-section.]

¹[2-A] Any authority empowered under sub-section (1) to frame and publish a list of touts may send to any Court subordinate to such authority the names of any persons alleged or suspected to be touts, and order that Court to hold an enquiry in regard to such persons, and the subordinate Court shall thereupon hold an inquiry into the conduct of such persons and after giving each such person an opportunity of showing cause as provided in sub-section (2) shall report to the authority which has ordered the inquiry the name of each such person who has been proved to the satisfaction of the subordinate Court to be a tout and that authority may include the name of any such person in the list of touts framed and published by that authority :

Provided that such authority shall hear any such person whom before his name has been so included appears before it and desires to be heard.]

(3) A copy of every such list shall be kept hung up in every Court to which the same relates.

(4) The Court or Judge may, by general or special order, exclude from the precincts of the Court any person whose name is included in any such list.

(5) Every person whose name is included in any such list shall be deemed to be proclaimed as a tout within the meaning of section 13, clause (e).

²[(6) Any person who acts as a tout whilst his name is included in any such list shall be punished with imprisonment which may extend to three months, or with fine which may extend to five hundred rupees or both.]

CHAPTER VIII.

MISCELLANEOUS.

37. To facilitate the ascertainment of the qualifications mentioned in section 6 the High Court shall, from time to time, appoint persons to be examiners for the purposes aforesaid, and may, from time to time, make regulations for conducting such examinations.

38 and 39. Omitted.

¹See footnote 2 under section 36.

²Section 36 (6) added vide Act No. 6 of 1988, published in Government Gazette dated 18th Mar 1988.

40. Notwithstanding anything hereinbefore contained no
Pleaders, etc. not to be
suspended or dismissed
without being heard. pleader, shall be suspended or dismissed
under this Act unless he has been allowed
an opportunity of defending himself before
the authority suspending or dismissing him.

41. ¹Repealed.

42. Nothing herein contained shall effect any rules issued
by the Revenue Department for appearance of legal practi-
tioners in a Revenue Court or office.

FIRST SCHEDULE—Omitted.

²[SECOND SCHEDULE.

VALUE OF STAMPS FOR CERTIFICATES.

(See section 25)

For a certificate authorising the holder to practise—

- (a) As a Pleader ... Rupees twenty-five per annum.
- (b) As a Vakil ... Rupees fifty per annum.
- (c) As an Advocate ... Rupees 750 in a lump sum.]

THE LUNACY ACT, 1977.

Act No. XXV of 1977.

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²Second Schedule substituted by Notification No. 19-L/1986 published in Government Gazette dated 7th Oct 1986.

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SCHEDULE I.—Forms.

THE LUNACY ACT, 1977.**Act No. XXV of 1977.**

[Sanctioned by His Highness the Maharaja Sahib Bahadur per chief Minister's endorsement No. 8372 dated 11th September, 1920 and State Council Resolution No. 1, dated 8th April, 1925, (Notification 14-L/81).]

An Act to consolidate and amend the law relating to Lunacy.

WHEREAS it is expedient to consolidate and amend the law relating to lunacy ; It is hereby enacted as follows:—

PART I.**PRELIMINARY.****CHAPTER I.**

1. Omitted.

2. Nothing contained in Part II shall be deemed to affect the powers of the High Court over any person found to be a lunatic by inquisition or over the property of such lunatic, or the rights of any person appointed by such Court as guardian of the person or manager of the estate of such lunatic.

Savings.

3. In this Act unless there is anything repugnant in the subject or context,—

Definitions.

(1) "asylum" means an asylum for lunatics established or licensed by Government :

(2) "cost of maintenance" in an asylum includes the cost of lodging, maintenance, clothing, medicine and care of a lunatic and any expenditure incurred in removing such lunatic to and from an asylum :

(3) "District Court" means the principal Civil Court of original jurisdiction in any area :

4) "criminal lunatic" means any person for whose [detention] in, or removal to an asylum, jail or other place

¹Short title, extent and commencement are given and regulated by Act IV of 1977.

²Substituted for "confinement" by Act 3 of 1988 published in Government Gazette dated 16th Mar 1988.

of safe custody an order has been made in accordance with the provisions of section 466 or section 471 of the Code of Criminal Procedure, or of section 30 of the Prisoners Act.

(5) "lunatic" means an idiot or person of unsound mind :

(6) "Magistrate" means a District Magistrate, Sub-Divisional Magistrate or a Magistrate of the first class specially empowered by the ¹[the Government] to perform the functions of a Magistrate under this Act :

(7) "medical officer" means a gazetted medical officer of Government, and includes a medical practitioner declared by general or special order of ¹[the Government] to be a medical officer for the purposes of this Act:

(8) "medical practitioner" means a holder of a qualification to practise medicine and surgery which can be registered in the United Kingdom in accordance with the law for the time being in force for the registration of medical practitioners, and includes any person declared by general or special order of ¹[the Government] to be a medical practitioner for the purposes of this Act :

(9) "prescribed" means prescribed by this Act or by rule made thereunder :

(10) "reception order" means an order made under the provisions of this Act for the reception into an asylum of a lunatic other than a lunatic so found by inquisition :

(11) "relative" includes any person related by blood, marriage or adoption : and

(12) "rule" means a rule made under this Act.

PART II.

RECEPTION, CARE AND TREATMENT OF LUNATICS.

CHAPTER II.

RECEPTION OF LUNATICS.

4. (1) No person other than a criminal lunatic or a lunatic so found by inquisition shall be received or detained in an asylum without a reception order save as provided by sections 8 and 16 :

Provided that any person in charge of an asylum may, with the consent of two of the visitors of such asylum, which

¹In sections 3(6), (7), (8), 5(1), 28, 30(2), 35, 84, 91 and 95 the words "the Government" substituted for "His Highness" vide Act X of 1996 published in Government Gazette dated 15th Bhadon 1996

consent shall not be given except upon a written application from the intending boarder, receive and lodge as a boarder in such asylum any person who is desirous of submitting himself to treatment.

(2) A boarder received in an asylum under the proviso to sub-section (1) shall not be detained in the asylum for more than twenty four hours after he has given to the person in charge of the asylum notice in writing of his desire to leave such asylum.

Reception orders on petition.

5. (1) An application for a reception order shall be made by petition accompanied by a statement of particulars to the Magistrate within the local limits of whose jurisdiction the alleged lunatic ordinarily resides, shall be in the form prescribed and shall be supported by two medical certificates on separate sheets of paper, one of which certificates shall be from a medical officer.

(2) If either of the medical certificates is signed by any relative, partner or assistant of the lunatic or of the petitioner, the petition shall state the fact, and, where the person signing is a relative, the exact manner in which he is related to the lunatic or petitioner.

(3) The petition shall also state whether any previous application has been presented for an inquiry into the mental capacity of the alleged lunatic in any Court; and if such application has been made, a certified copy of the order made thereon shall be attached to the petition.

(4) No application for a reception order shall be entertained in any area unless ¹[the Government) has, by notification in the Government Gazette, declared such area as an area in which reception orders may be made.

6. ²[(1) Subject to the provisions of sub-section (3) the petition shall be presented by the husband or wife of the alleged lunatic, or, if there is no husband or wife or the husband or wife is prevented by reason of insanity, absence from the State or otherwise from making the presentation, by the nearest relative of the alleged lunatic, who is not so prevented.]

[(2) If the petition is not presented by the husband or wife, or, where there is no husband or wife, by the nearest relative of the alleged lunatic, the petition] shall contain a statement of the reasons why it is not so presented and of the connection of

¹See footnote under section 5.

²Section 4 sub-section (1) substituted and words within brackets in sub-section 2) substituted by Act 8 of 1988 published in Government Gazette dated 18th Mar 1988.

the petitioner with the alleged lunatic, and the circumstances under which he presents the petition.

(3) No person shall present a petition unless he has attained the age of majority as determined by the law to which he is subject, and has within fourteen days before the presentation of the petition, personally seen the said lunatic.

(4) The petition shall be signed and verified by the petitioner, and the statement of prescribed particulars by the person making such statement.

7. (1) Upon the presentation of the petition the Magistrate shall consider the allegations in the petition and the evidence of lunacy appearing by the medical certificates.

(2) If he considers that there are grounds for proceeding further, he shall personally examine the alleged lunatic unless for reasons to be recorded in writing he thinks it unnecessary or inexpedient so to do.

(3) If he is satisfied that a reception order may properly be made forthwith, he may make the same accordingly.

(4) If he is not so satisfied, he shall fix a date (notice whereof shall be given to the petitioner and to any other person to whom in the opinion of the Magistrate notice should be given) for the consideration of the petition, and he may make such further or other inquiries of or concerning the alleged lunatic as he thinks fit.

8. Upon the presentation of the petition, the Magistrate may make such order as he thinks fit for the suitable custody of the alleged lunatic pending the conclusion of the inquiry.

9. The petition shall be considered in private in the presence of the petitioner, the alleged lunatic (unless the Magistrate in his discretion otherwise directs,) any person appointed by the alleged lunatic to represent him and such other persons as the Magistrate thinks fit.

10. (1) At the time appointed for the consideration of the petition, the Magistrate may either make a reception order or dismiss the petition, or may adjourn the same for further evidence or inquiry and may make such order as to the payment of the costs of the inquiry by the person upon whose application it was made or out of the estate of the alleged lunatic if found to be of unsound mind, or otherwise as he thinks fit.

(2) If the petition is dismissed, the Magistrate shall record in writing his reasons for dismissing the same, and shall deliver or cause to be delivered to the petitioner a copy of such order.

11. No reception order shall be made under section 7 or section 10, save in the case of a lunatic who is dangerous and unfit to be at large, unless—

Further provisions as to reception orders on petition.

(a) the Magistrate is satisfied that the person in charge of an asylum is willing to receive the lunatic, and

(b) the petitioner or some other person engages in writing to the satisfaction of the Magistrate to pay the cost of maintenance of the lunatic.

¹[**11-A.** The Magistrate may, subject to the provision of this section by order in writing (hereinafter referred to as an order of substitution) transfer the duties and responsibilities, under this Act of the person, on whose petition a reception order has been made to other person, who is willing to undertake the same, and such other person shall thereupon be deemed, for the purposes of this Act, to be the person, on whose petition the reception order was made and all references in this Act to such last mentioned person shall be construed accordingly :

Power to appoint substitute for the person upon whose application a reception order has been made.

Provided that no such order of substitution shall release the person, upon whose petition the reception order was made or if he is dead, his legal representative from any liability incurred before the order of substitution was made.

(2) Before making any order of substitution, the Magistrate shall send a notice to the person, upon whose petition the reception order was made, if he is alive, and to any relative of the lunatic to whom, in the opinion of the Magistrate, notice should be given ; the notice shall specify the name of the person in whose favour it is proposed to make such order and the date, which shall be not less than twenty days from the sending of the notice upon which any objection to the making of the order will be considered.

(3) On such date or any subsequent date to which the proceedings may be adjourned, the Magistrate shall consider any objection made by any person to whom notice has been sent; or by any other relative of the lunatic, and shall receive all such evidence as may be produced by or on behalf of any of such persons and such further evidence, if any, as the Magistrate thinks necessary, and may thereafter make or refrain from making an order of substitution:

Provided that, if the person on whose petition the reception order was made is dead and any other person is willing and, in the opinion of the Magistrate, fitted to undertake the

¹Section 11-A added by Act III of 1988 published in Government Gazette dated 18th Mar 1988.

duties and responsibilities, under this Act of such first mentioned person, the Magistrate shall make such an order.

(4) If in proceedings under this section any question arises as to the person to whom the duties and responsibilities, under this Act, of a person upon whose petition a reception order has been made shall be entrusted the Magistrate shall give preference to the person who is the nearest relative of the lunatic, unless for reasons to be recorded in writing, the Magistrate considers that such preference would not be in the interests of the lunatic.

(5) The Magistrate may make such order for the payment of the costs of an inquiry under this section by any person who is a party thereto or out of the estate of the lunatic, as he thinks fit.

(6) Any notice under sub-section (2) may be sent by post to the last known address of the person for whom it is intended.]

Reception orders otherwise than on petition.

12. Omitted.

13. (1) Every officer in charge of a police-station may arrest or cause to be arrested all persons found wandering at large within the limits of his station whom he has reason to believe to be lunatics, and shall arrest or cause to be arrested all persons within the limits of his station whom he has reason to believe to be dangerous by reason of lunacy. Any person so arrested shall be taken forthwith before the Magistrate.

(2) Every officer in charge of a police-station who has reason to believe that any person within the limits of his station is deemed to be a lunatic and is not under proper care and control, or is cruelly treated or neglected by any relative or other person having the charge of him, shall immediately report the fact to the Magistrate.

14. Whenever any person is brought before a Magistrate under the provisions of sub-section (1) of section 13, the Magistrate shall examine such person, and if he thinks that there are grounds for proceeding further, shall cause him to be examined by a medical officer, and may make such other inquiries as he thinks fit; and if the Magistrate is satisfied that such person is a lunatic and proper person to be detained, he may, if the medical officer who has examined such person gives a medical certificate with regard to such person, make a reception order for the admission of such lunatic into an asylum :

Powers and duties of police in respect of wandering or dangerous lunatics and lunatics cruelly treated or not under proper care and control.

Reception order in case of wandering and dangerous lunatics.

Provided that, if any friend or relative desires that the lunatic be sent to a licensed asylum and engages in writing to the satisfaction of the Magistrate to pay the cost of maintenance of the lunatic in such asylum, the Magistrate shall, if the person in charge of such asylum consents, make a reception order for the admission of the lunatic into the licensed asylum mentioned in the engagement:

Provided further that if any friend or relative of the lunatic enters into a bond with or without sureties for such sum of money as the Magistrate thinks fit, conditioned that such lunatic shall be properly taken care of and shall be prevented from doing injury to himself or to others, the Magistrate, instead of making a reception order, may, if he thinks fit, make him over to the care of such friend or relative.

15. (1) If it appears to the Magistrate, on the report of a police-officer or the information of any other person, that any person within the limits of his jurisdiction deemed to be a lunatic is not under proper care and control, or is cruelly treated or neglected by any relative or other person having the charge of him, the Magistrate may cause the alleged lunatic to be produced before him, and summon such relative or other person as has or ought to have the charge of him.

(2) If such relative or other person is legally bound to maintain the alleged lunatic, the Magistrate may make an order for such alleged lunatic being properly cared for and treated, and, if such relative or other person wilfully neglects to comply with the said order, the Magistrate may sentence him to imprisonment for a term which may extend to one month.

(3) If there is no person legally bound to maintain the alleged lunatic, or if the Magistrate thinks fit so to do, he may proceed as prescribed in section 14, and upon being satisfied in manner aforesaid that the person deemed to be a lunatic is a lunatic and a proper person to be detained under care and treatment may, if a medical officer gives a medical certificate with regard to such lunatic, make a reception order for the admission of such lunatic into an asylum.

16. (1) When any person alleged to be a lunatic is brought before a Magistrate under the provision of section 13 or section 15, the Magistrate may, by an order in writing, authorise the detention of the alleged lunatic in suitable custody for such time not exceeding ten days as may be in his opinion, necessary to enable the medical officer to de-

Order in case of lunatic
cruelly treated or not
under proper care and
control.

Detention of alleged
lunatic pending report
by medical officer.

termine whether such alleged lunatic is a person in respect of whom a medical certificate may be properly given.

(2) The Magistrate may, from time to time, for the same purpose by order in writing authorise such further detention of the alleged lunatic for periods not exceeding ten days at a time as he thinks necessary:

Provided that no person shall be detained in accordance with the provision of this section for a total period exceeding thirty days from the date on which he was first brought before the Magistrate.

17. Omitted.

Further provisions as to reception orders and medical certificates.

18. (1). Every medical certificate under this Act shall be made and signed by a qualified medical practitioner or a medical officer, as the case may be, and shall be in the form prescribed.

Medical certificates

(2) Every medical certificate shall state the facts upon which the person certifying has formed his opinion that the alleged lunatic is a lunatic, distinguishing facts observed by himself from facts communicated by others and no reception order on petition shall be made upon a certificate founded only upon facts communicated by others.

(3) Every medical certificate made under this Act shall be evidence of the facts therein appearing and of the judgment therein stated to have been formed by the person certifying on the such facts, as if the matters therein appearing had been verified on oath.

19. (1) A reception order required to be founded on a medical certificate shall not be made unless the person who signs the medical certificate or where two certificates are required, each person who signs a certificate, has personally examined the alleged lunatic, in the case of an order upon petition, not more than seven clear days before the date of the presentation of the petition, and, in all other cases, not more than seven clear days before the date of the order.

(2) Where two medical certificates are required, a reception order shall not be made unless each person signing a certificate has examined the alleged lunatic separately from the other.

20. A reception order, if the same appears to be in conformity with this Act shall be sufficient authority for the petitioner or any person authorised by him, or in the case of an order not made upon petition, for the person authorised so to do by the person

Authority for reception.

Time and manner of medical examination of lunatics.

making the order, to take the lunatic and convey him to the place mentioned in such order and for his reception and detention therein, or in any asylum to which he may be removed in accordance with the provisions of this Act, and the order may be acted on without further evidence of the signature or of the jurisdiction of the person making the order.

¹[Provided that no reception order shall continue to have effect:—

(a) After the expiry of thirty days from the date on which it was made, unless the lunatic has been admitted to the place mentioned therein within that period, or

(b) After the discharge, under the provisions of this Act, of the lunatic from such place or from any asylum to which he may have been removed.]

21. Any authority making a reception order under this Part shall forthwith send a certified copy of the order to the person in charge of the asylum into which such lunatic is to be admitted.

Copy of reception order to be sent to person in charge of asylum.

22. Omitted.

Detention of lunatics pending removal to asylum.

23. When any reception order has been made under sections 7, 10, 14, or 15, the Magistrate may, for reasons to be recorded in writing, direct that the lunatic, pending his removal to an asylum be detained in suitable custody in such place as the Magistrate thinks fit.

Detention of lunatics pending removal to asylum.

Reception and detention of criminal lunatics.

24. An order under section 466 or section 471 of the Code of Criminal Procedure, or under section 30 of Prisoners Act, directing the reception of a criminal lunatic into any asylum which is prescribed for the reception of criminal lunatics shall be sufficient authority for the reception and detention of any person named therein in such asylum or in any other asylum to which he may be lawfully transferred.

Reception and detention of criminal lunatics.

Reception after inquisition.

25. A lunatic so found by inquisition may be admitted in-
 Re ption after inquisi- to an asylum—
 tion.

(1) in the caase of an inquisition under Chapter IV, on an order made by or under the authority of the High Court,

(2) in the case of an inquisition under Chapter V on an order made by the District Court.

26. (1) When any lunatic has been admitted into an asy-
 Order for payment of lum in accordance with the provisions of
 cost of maintenance of section 25, the High Court or the District
 lunatic. Court, as the case may be, shall, on the application of the person in charge of the asylum, make an order for the payment of the cost of maintenance of the lunatic in the asylum, and may from time to time direct that any sum of money payable under such order shall be recovered from the estate of the lunatic or of any person legally bound to maintain him :

Provided that if at any time it shall appear to the satisfac- tion of the Court that the lunatic has not sufficient property, and that no person legally bound to maintain such lunatic has sufficient means for the payment of such cost, the Court shall certify the same instead of making such order for the payment of the cost as aforesaid.

(2) An order under sub-section (1) shall be enforced in the same manner and shall be of the same force and effect and subject to the same appeal as a decree made by the Court in a suit in respect of the property or person therein mentioned.

Amendment of order or certificate.

27. If, after the reception of any lunatic into any asylum
 Amendment of order or on a reception order, it appears that the
 certificate. order upon which he was received or the medical certificate or certificates upon which such order was made is or are defective or incorrect, the same may at any time afterwards be amended by the person or persons signing the same with the sanction of two or more of the visitors of the said asylum, one of whom shall be a medical officer.

CHAPTER III.

CARE AND TREATMENT.

Visitors.

28. (1) ¹[The Government] shall appoint for every asylum not less than three visitors, one of whom at least shall be a medical officer.

Appointment of visitors.

(2) Minister-in-charge of Prisons shall be a visitor *ex-officio* of all the asylums within the State.

29. Two or more of the visitors, one of whom shall be a medical officer, shall, once at least in every month, together inspect every part of the asylum of which they are visitors, and see and examine, as far as circumstances will permit, every lunatic and boarder therein, and the order and certificate for the admission of every lunatic admitted since the last visitation of the visitors and shall enter in a book to be kept for that purpose any remarks which they may deem proper in regard to the management and condition of asylum and the inmates thereof.

Monthly inspection by visitor.

30. (1) When any person is ²[detained] under the provisions of section 466 or section 471 of the Code of Criminal Procedure, the Minister-in-charge of Prisons, if such person is ²[detained] in a jail or the visitors of the asylum or any two of them, if he is ²[detained] in an asylum, may visit him in order to ascertain his state of mind ; and he shall be visited once at least in every six months by such Minister or by two of such visitors as aforesaid ; and such Minister or visitors shall make a special report as to the state of mind of such person to the authority under whose order he is ²[detained].

Inspection of criminal lunatic by Inspector-General or visitors.

(2) ¹[The Government] may empower the officer-in-charge of the Jail in which such person may be ²[detained] to discharge all or any of the functions of the Minister under sub-section (1).

Discharge of lunatics.

31. (1) Three of the visitors of any asylum, of whom one shall be a medical officer, may, by order in writing, direct the discharge of any person detained in such asylum, and such person shall thereupon be discharged :

Order of discharge from asylum by visitors.

¹ See footnote under section 8.
² Substituted for "confined" by Act 8 of 1988 published in Government Gazette dated 6th Mar 1988.

Provided that no order under this sub-section shall be made in the case of a criminal lunatic, otherwise than as provided by section 30 of the Prisoners Act, 1977.

(2) When such order is made, if the person is detained under the order of any public authority, notice of the order of discharge shall be immediately communicated to such authority.

32. A lunatic detained in an asylum under a reception order, made on petition, shall be discharged if the person on whose petition the reception order was made so applies in writing to the person in charge of the asylum.

Discharge of lunatic in other cases.

Provided that no lunatic shall be discharged if the officer in charge of the asylum certifies in writing that the lunatic is dangerous and unfit to be at large.

33. When any relative or friend of a lunatic detained in any asylum under the provisions of sections 14 or 15 is desirous that such lunatic shall be delivered over to his care and custody, he may make application to the authority under whose order the lunatic is detained, and such authority, if it thinks fit, in consultation with the person in charge of the asylum and with the visitors or with one of them being a medical officer, and upon such relative or friend entering into a bond with or without sureties for such sum of money as the said authority thinks fit conditioned that such lunatic shall be properly taken care of and shall be prevented from doing injury to himself or to others, may make an order for the discharge of such lunatic and such lunatic shall thereupon be discharged.

34. If any lunatic detained in an asylum on a reception order made under sections 7, 10, 14 or 15 is subsequently found on an inquisition under Chapter IV or Chapter V not to be of unsound mind and incapable of managing himself and his affairs, the person in charge of the asylum shall forthwith, on the production of a certified copy of such finding, discharge the alleged lunatic from the asylum.

Discharge of person subsequently found on inquisition not to be of unsound mind.

Removal of lunatics.

35. (1) Any lunatic may be removed from any asylum established by Government, to any other asylum within the State in accordance with any general or special order of [the Government].

Removal of lunatics and criminal lunatics.

¹See footnote under section 3.

Provided that no lunatic admitted into an asylum on a reception order made on petition shall be removed in accordance with the provisions of this sub-section until notice of such intended removal has been given to the petitioner.

(2) ¹[The Government] may make such general or special order as it thinks fit directing the removal of any person for whose ²[detention] an order has been made under section 466 or 471 of the Code of Criminal Procedure, 1898. from the place where he is for the time being ¹[detained], to any asylum, jail or other place of safe custody in the State.

Escape and re-capture.

36. Every person received into an asylum under any such order as is required by this Act may Order to justify detention and re-capture after escape. be detained therein until he is removed or discharged as authorised by law, and in case of escape may, by virtue of such order, be retaken by any police officer or by the person in charge of such asylum, or any officer or servant belonging thereto, or any other person authorised in that behalf by the said person in charge, and conveyed to and received and detained in such asylum:

Provided that in the case of a lunatic not being a criminal lunatic the power to re-take such escaped lunatic under this section shall be exerciseable only for a period of one month from the date of his escape.

PART III.

JUDICIAL INQUISITION AS TO LUNACY.

CHAPTER IV.

37 to 61. Omitted.

CHAPTER V.

PROCEEDINGS IN LUNACY.

Inquisition.

62. Whenever any person is possessed of property and is alleged to be a lunatic, the District Court within whose jurisdiction such person is residing may upon application, by order direct an inquisition for the purpose of Power of District Court to institute inquisition as to persons alleged to be lunatic.

¹See footnote under Section 3.

²Substituted for "confinement" and "confined" by Act III of 1968 published in Government Gazette dated 18th May 1968.

ascertaining whether such person is of unsound mind and incapable of managing himself and his affairs.

63. (1) Application for such inquisition may be made by Application by whom to be made. any relative of the alleged lunatic or by any public Curator appointed under the Succession (Property Protection) Act (hereinafter referred to as the Curator), or by the Government Pleader, as defined in the Code of Civil Procedure, or if the property of the alleged lunatic consists in whole or in part of land or any interest in land, by the Collector of the district in which it is situate.

(2) If the property or any part thereof is of such a description that it would by the law in force in the State subject the proprietor, if disqualified, to the jurisdiction of the Court of Wards, the application may be made by the Collector on behalf of the Court of Wards.

64. (1) Notice shall be given to the alleged lunatic of Regulation of proceedings of District Courts. the time and place at which it is proposed to hold the inquisition.

If it appears that personal service on the alleged lunatic would be in effectual, the Court may direct such substituted service of the notice as it thinks fit.

The Court may also direct a copy of such notice to be served upon any relative of the alleged lunatic and upon any other person to whom in the opinion of the Court notice of the application should be given.

(2) The Court may require the alleged lunatic to attend at such convenient time and place as it may appoint for the purpose of being personally examined by the Court, or by any person from whom the Court may desire to have a report of the mental capacity and condition of such alleged lunatic.

The Court may likewise make an order authorising any person or persons therein named to have access to the alleged lunatic for the purpose of a personal examination.

(3) The attendance and examination of the alleged lunatic under the provisions of sub-section (2) shall, if the alleged lunatic be a woman who, according to the manners and customs of the country ought not to be compelled to appear in the public, be regulated by the law and practice for the examination of such persons in other Civil cases.

65. (1) The District Court, if it thinks fit, may appoint Inquisition by District Courts and finding thereon. two or more persons to act as assessors to the Court in the said inquisition.

(2) Upon the completion of the inquisition, the Court shall determine whether the alleged lunatic is of unsound mind and incapable of managing himself and his affairs or may

come to a special finding that such alleged lunatic is of unsound mind so as to be incapable of managing his affairs but that he is capable of managing himself and is not dangerous to himself or to others.

66. (1) If the alleged lunatic resides at a distance of more than fifty miles from the place where the District Court is held to which the application is made, the said Court may issue a commission to any subordinate Court to make the inquisition, and such subordinate Court shall thereupon conduct the inquisition in the manner hereinbefore provided in this Chapter.

Inquisition by subordinate Court on commission issued by District Court and proceedings thereon.

(2) On the completion of the inquisition, the subordinate Court shall transmit the record of its proceedings with the opinions of the assessors, if assessors have been appointed, and its own opinion on the case; and the District Court shall thereupon proceed to dispose of the application in the manner provided in section 65 sub-section (2):

Provided that the District Court may direct the subordinate Court to make such further or other inquiries as it thinks fit before disposing of the application.

Judicial powers over person and estate of lunatic.

67. (1) The Court may make orders for the custody of lunatics so found by inquisition and the management of their estates.

Custody of lunatics and management of their estates.

(2) When upon the inquisition it is specially found that the person to whom the inquisition relates is of unsound mind so as to be incapable of managing his affairs, but that he is capable of managing himself and is not dangerous to himself or to others, the Court may make such orders as it thinks fit for the management of the estate of the lunatic including proper provisions for the maintenance of the lunatic and of such members of his family as are dependent on him for maintenance, but it shall not be necessary to make any order as to the custody of the person of the lunatic.

68. If the estate of a lunatic so found or any part thereof consists of property which, by the law for the time being in force, subjects the proprietor, if disqualified, to the jurisdiction of the Court of Wards, the Court of Wards shall be authorised to take charge of the same.

Court of Wards to be authorised in certain cases to take charge of estate of lunatic.

69. (1) If the estate of a lunatic so found consists in whole or in part of land or any interest in land, but is not of such a nature that it would subject the proprietor, if disqualified

Power to direct Collector to take charge of person and estate of lunatic in certain cases.

to the jurisdiction of the Court of Wards, the District Court may direct the Collector to take charge of the person and estate of the lunatic :

Provided that no such order shall be made without the consent of the Collector previously obtained.

(2) The Collector shall thereupon appoint a manager of the estate, and may appoint a guardian of the person of the lunatic.

70. All proceedings of the Collector in regard to the person or estate of a lunatic under this Chapter shall be subject to the control of the His Highness' or such authority as he may appoint in this behalf.

Control over proceedings of Collector.

71. (1). In all other cases the District Court shall appoint a manager of the estate of the lunatic and may appoint a guardian of his person :

Power of District Court to appoint guardian and manager and take security from manager.

Provided that (i) If it appears to the Court, having regard to the situation and condition in life of the lunatic and his family and the other circumstances of the case to be expedient that his property should be made available for his or their maintenance in a direct and inexpensive manner it may, instead of appointing a manager of the estate, order that the property if money or if of any other description the produce thereof when realised, be paid to such person as the Court may think fit, to be applied for the purpose aforesaid.

The receipt of the person so appointed shall be valid discharge to any person who pays any money or delivers any property of the lunatic to such person.

(ii) If it appears to the Court that the unsoundness of mind of a lunatic is in its nature temporary, and that it is expedient to make temporary provision for his maintenance or for the maintenance of such members of his family as are dependent on him for their maintenance, the Court may, in like manner as under above proviso, direct his property or a sufficient part of it to be applied for the purpose aforesaid.

(2) Any person who has been appointed by the District Court or Collector to manage the estate of a lunatic shall, if so required, enter into a bond in such form and with such sureties as to the Court or the Collector, as the case may be, may seem fit, engaging duly to account for what he may receive in respect of the property of the lunatic.

72. The legal heir of a lunatic shall not be appointed to be the guardian of the person of such lunatic unless the Court or the Collector, as the case may be, for reasons to be recorded in writing, considers that such an appoint-

Restriction on appointment of legal heir of lunatic to be guardian of his person.

ment is for the benefit of the lunatic.

73. A guardian of the person of a lunatic or a manager of his estate appointed under this Chapter shall be paid such allowance, if any, as the Court or the Collector, as the case may be, thinks fit for his care and pains in the execution of his duties.

Remuneration of managers and guardians.

74. (1) The person appointed to be guardian of a lunatic's person shall have the care of his person and maintenance.

Duties of guardian.

(2) When a distinct guardian is appointed, the manager shall pay to the guardian such allowance as may be fixed by the District Court or the Collector, as the case may be, for the maintenance of the lunatic and such members of his family as are dependent on him for their maintenance.

75. (1) Every manager of the estate of a lunatic appointed as aforesaid may exercise the same powers in the management of the estate as might have been exercised by the proprietor if not a lunatic, and may collect and pay all just claims, debts and liabilities due to or by the estate of the lunatic :

Powers of manager.

Provided that no manager so appointed shall without the permission of the Court—

(a) mortgage, charge or transfer by sale, gift, exchange or otherwise any immoveable property of the lunatic,

(b) lease any such property for a term exceeding five years.

Such permission may be granted subject to any condition or restriction which the Court thinks fit to impose.

(2) Before granting any such permission, the Court may cause notice of the application for such permission to be served on any relative or friend of the lunatic, and may make or cause to be made such inquiries as to the Court may seem necessary in the interests of the lunatic.

76. (1) Every person appointed by the District Court or by the Collector to be manager of the estate of a lunatic shall within six months from the date of his appointment, deliver in Court or to the Collector, as the case may be, an inventory of the immoveable property belonging to the lunatic and of all such money, or other moveable property, as he may receive on account of the estate, together with a statement of all debts due by or to the same.

Manager to furnish inventory and annual accounts.

(2) Every such manager shall also furnish to the Court or to the Collector annually, within three months of the close of the year of the era current in the district, an account of the property in his charge, exhibiting the sums received and dis-

bursed on account of the estate and the balance remaining in his hands.

77. If any relative of the lunatic, or the Collector by petition to the Court, impugns the accuracy of the said inventory and statement, or of any annual account, the Court may summon the manager and inquire summarily into the matter and make such order thereon as it thinks fit; or the Court, at its discretion, may refer any such petition to any subordinate Court or to the Collector if the manager was appointed by the Collector.

78. All sums received by a manager on account of any estate in excess of what may be required for the current expenses of the lunatic or of the estate, shall be paid into the public treasury on account of the estate, and shall be invested from time to time in any of the securities specified in section 20 of the Trusts Act, unless the Court or the Collector, as the case may be, for reasons to be recorded in writing, directs that such sums be in the interest of the lunatic otherwise invested or applied.

79. Any relative of a lunatic may with the leave of the District Court sue for an account from any manager appointed under this Chapter, or from any such person after his removal from office or trust, or from his legal representative in case of his death, in respect of any estate then or formerly under his care or management or of any sums of money or other property received by him on account of such estate.

80. (1) The District Court, for any sufficient cause, may remove any manager appointed by it not being the Curator, and may appoint such Curator or any other fit person in his place, and may compel the person so removed to make over the property in his hands to his successor, and to account to such successor for all money received or disbursed by him.

(2) The Court may also, for any sufficient cause, remove any guardian of the person of the lunatic appointed by it, and may appoint any other fit person in his place.

(3) The Collector, for any sufficient cause, may remove any manager of the estate of a lunatic or guardian of the person of a lunatic appointed by him, and may appoint any other fit person in place of such manager or guardian; and the District Court on the application of the Collector, may compel any manager removed under this section to make over property and all accounts in his hands to his successor and to account to such successor for all money received or disbursed by him.

81. The District Court may impose a fine not exceeding five hundred rupees on any manager of the estate of a lunatic who wilfully neglects or refuses to deliver his accounts or any property in his hands within the time fixed by the Court, and may realise such fine as if it were a sum due under a decree of the Court, and may also commit the recusant to the civil jail until he delivers such accounts or property.

Penalty on manager for refusing to deliver accounts or property.

82. (1) When any person has been found under this chapter to be of unsound mind, and it is subsequently shown to the District Court that there is reason to believe that such unsoundness of mind has ceased, such Court may make an order for inquiring whether such person is still of unsound mind and incapable of managing himself and his affairs.

Proceedings in lunacy to cease or to be set aside if Court finds that the unsoundness of mind has ceased.

(2) The inquiry shall, as far as may be, be conducted in the same manner as is prescribed in this Chapter for an inquiry into the unsoundness of mind of an alleged lunatic, and if it is found that the unsoundness of mind has ceased, the Court shall order all proceedings in the lunacy to cease or to be set aside on such terms and conditions as to the Court may seem fit.

83. An appeal shall lie to the High Court from any order made by a District Court, under this Chapter.

Appeals

PART IV.

MISCELLANEOUS.

CHAPTER VI.

ESTABLISHMENT OF ASYLUMS.

84. '[The Government] may establish or licence the establishment of asylums at such places as it thinks fit.

Local Government may establish or licence the establishment of asylums.

85. Omitted.

CHAPTER VII.

EXPENSES OF LUNATICS.

86. When any lunatic is admitted to a licensed asylum under a reception order or an order under section 25 and no engagement has been taken from the friends or relatives of the lunatic or order made by the Court for the payment of expenses under the provisions of this Act the cost of maintenance of such lunatic shall, subject to the provision of any law for the time being in force, be paid by the Government to the person in charge of such asylum.

87. Any money in the possession of a lunatic found wandering at large may be applied by the Magistrate towards the payment of the cost of maintenance of the lunatic or of any other expenses incurred on his behalf, and any moveable property found on the person of the lunatic may be sold by the Magistrate, and the proceeds thereof similarly applied.

88. If a lunatic detained in an asylum on a reception order made under section 14, or section 15 has an estate applicable to his maintenance, or if any person legally bound to maintain such lunatic has the means to maintain him, the authority which made the reception order or any local authority liable for the cost of maintenance of such lunatic under any law for the time being in force may apply to the High Court or District Court within the local limits of the original jurisdiction of which the estate of the lunatic is situate or the person legally bound to maintain him resides, for an order for the payment of the cost of maintenance of the lunatic.

89. (1) The Court shall inquire into the matter in a summary way, and on being satisfied that such lunatic has an estate applicable to his maintenance, or that any person is legally bound to maintain and has the means of maintaining such lunatic, may make an order for the recovery of the cost of maintenance of such lunatic, together with the costs of the application out of such estate or from such person.

(2) Such order shall be enforced in the same manner, and shall be of the same force and effect and subject to the same appeal as a decree made by the said Court in a suit in respect of property or person therein mentioned.

90. The liability of any relative or person to maintain any lunatic shall not be taken away or affected by any provision contained in this Act.

Saving of liability of relatives to maintain lunatic.

CHAPTER VIII.

RULES.

91. ¹[The Government] may make rules for all or any of the following purposes, namely:—

Power of the Government to make rules.

(a) to prescribe forms for any proceeding under this Act;

(b) to prescribe places of detention and regulate the care and treatment of persons detained under section 8 or section 16;

(c) to regulate the ²[detention], care, treatment and discharge of criminal lunatics;

(d) to regulate the management of asylums and the care and custody of the inmates thereof and their transfer from one asylum to another;

(e) to regulate the transfer of criminal lunatics to asylums;

(f) to prescribe the procedure to be followed by District Courts and Magistrates before a lunatic is sent to any asylum established by Government;

(g) to prescribe the asylums established by Government within the province to which lunatics from any area or any class of lunatics shall be sent;

(h) to prescribe conditions subject to which asylums may be licensed;

(i) save as otherwise provided in this Act generally to carry into effect the provisions of the Act.

(2) In making any rule under this section, ¹[the Government] may direct that a breach of it shall be punishable with fine which may extend to fifty rupees.

92. All rules made under section 91 shall be published in the Jammu and Kashmir Government Gazette, and shall thereupon have effect as if enacted in this Act.

Publication of rules.

¹See footnote under Section 3.
²Substituted for "confinement" by Act 3 of 1988 published in Government Gazette, dated 16th Mar 1988.

CHAPTER IX.

SUPPLEMENTAL PROVINCES.

93. Any person who—

Penalty for improper reception or detention of lunatic. (a) otherwise than in accordance with the provisions of this Act receives or detains a lunatic or alleged lunatic in an asylum, or

(b) for gain detains two or more lunatics in any place not being an asylum, shall be punishable with imprisonment which may extend to two years or with fine or with both

94. The provisions of Chapter XLII of the Code of Criminal Procedure, shall, so far as may be, apply to bonds taken under this Act.

95. (1) When any sum is payable in respect of pay, pension, gratuity or other similar allowance to any person by Government and the person to whom the sum is payable is certified by a Magistrate to be a lunatic, the Government officer under whose authority such sum would be payable if the payee were not a lunatic may pay so much of the said sum as he thinks fit to the person having charge of the lunatic, and may pay the surplus, if any, or such part thereof as he thinks fit for maintenance of such members of the lunatic's family as are dependent on him for maintenance.

(2) ¹[The Government] shall be discharged of all liability in respect of the amounts paid in accordance with this section.

96. Subject to any rules, the form set forth in the First Schedule, with such variation as the circumstances of each case may require, shall be used for the respective purposes therein mentioned, and if used shall be sufficient.

97. No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act.

98. to 101. Omitted.

¹See footnote under section 3.

SCHEDULE.

FORMS.

(See section 96.)

FORM I.

Application for Reception Order.

(See sections 5 and 6).

In the matter of A. B. (a), residing at _____, by occupation _____,
 , son of _____
 a person alleged to be a lunatic.

To

(or District Magistrate of
 or Sub-divisional Magistrate of
 , or Magistrate specially empowered under the Lunacy
 Act _____).

The petition of C. D. (i), residing at _____, by
 occupation _____, son of _____; in the
 town of _____ (or sub-division of _____)
 in the district of _____).

1. I am _____ (ii) years of age.

2. I desire to obtain an order for the reception of A. B. as
 lunatic in the _____ asylum of _____
 situate at (iii).

3. I last saw the said A. B. at _____ on the
 (iv) day of _____
 I am the _____ (v) of the said A. B.

(or if the petitioner is not a relative of the patient state as follows).

4. I am not a relative of the said A. B. The reasons why this
 petition is not presented by a relative are as follows: (State them).

The circumstances under which this petition is presented by me are as
 follows: (State them.)

(i) Full name, caste and titles.

(ii) Enter the number of completed years. The petitioner must be at least
 eighteen or twenty-one whichever is the age of majority under the law to which the
 petitioner is subject.

(iii) Insert full description of the name and locality of the asylum or the name,
 address and description of the person in charge of the asylum.

(iv) A day within 14 days before the date of presentation of the petition is
 requisite.

(v) Here state the relationship with the patient.

5. The persons signing the medical certificates which accompany the petition are (i).

6. A statement of particulars relating to the said A. B. accompanies this petition.

7. *(If that is the fact.)* An application for an inquiry into the mental capacity of the said A. B. was made to the
on the

and a certified copy of the order made on the said petition is annexed hereto.
(Or if that is the fact.)

No application for an inquiry into the mental capacity of the said A. B. has been made previous to this application.

The petitioner therefore prays that a reception order may be made in accordance with the foregoing statement.

(Sd.) C. D.

The statements contained or referred to in paragraphs are true to my knowledge; the other statements are true to my information and belief.

(Sd.) C. D.

Dated

Statement of particulars.

(If any of the particulars in this statement is not known, the fact to be so stated.)

The following is a statement of particulars relating to the said A. B.

Name of patient at length.

Sex and age.

Married, single or widowed.

Previous occupation.

Caste and religious belief, as far as known.

Residence at or immediately previous to the date hereof.

Names of any near relatives to the patient who are alive.

Whether this is first attack of lunacy.

Age (if known) on first attack.

When and where previously under care and treatment as a lunatic. Duration of existing attack.

Supposed cause.

Whether the patient is subject to epilepsy.

Whether suicidal.

Whether the patient is known to be suffering from phthisis or any form of tubercular disease.

Whether dangerous to others, and in what way.

Whether any near relative (stating the relationship) has been afflicted with insanity.

Whether the patient is addicted to alcohol, or the use of opium, ganja, charas, bhang, cocaine or other intoxicant.

(The statements contained or referred to in paras. are true to my knowledge. The other statements are true to my information and belief.)

Signature by person making the statement.

(i) Here state whether either of the persons signing the medical certificates is a relative, partner or assistant of the lunatic or of the petitioner and, if a relative of either, the exact relationship.

FORM 2.

Reception Order on Petition.

(See sections 7, 10.)

I, the undersigned E., F., being the District Magistrate of
 or the Sub-divisional Magistrate of or a Magistrate
 of the first class specially empowered by Government to perform the functions
 of a Magistrate under the Lunacy Act upon the petition of C. D. of (a) in
 the matter of A. B., (a) a lunatic, accompanied by the medical certificate of
 G. H., a medical officer, and of J. K., a medical practitioner (or medical officer),
 under the said Act, hereto annexed, hereby authorise you to receive the
 said A. B. into your asylum. And I declare that I have (or have not) personally
 seen the said A. B. before making this order.

(Sd.) E. F.

(Designation as above.)

To (b)

FORM 3.

Medical Certificate.

(See sections 18, 19.)

In the matter of A. B. of (i) in the town of (or
 the sub-division of in the district of)
 an alleged lunatic.

I, the undersigned C. D., do hereby certify as follows:—

1. I am a gazetted medical officer (or a medical practitioner declared by Government
a holder of (is) or declared by His Highness to be a medical
to be medical officer under Act IV of 1912) and I am in the actual practice of the
practitioner under the Lunacy Act)
 medical profession.

2. On the day of 19 at (iii) in the town of (or the sub-
 division of village)
 in the district of
 (separately from any other practitioner) (iv), I personally examined the said A.
 B. and came to the conclusion that the said A. B. is a lunatic and a proper
 person to be taken charge of and detained under care and treatment.

3. I formed this conclusion on the following grounds, viz—
 (a) Facts indicating insanity observed by myself, viz—
 (b) Other facts (if any) indicating insanity communicated to me by
 others, viz:—Here state the information and from whom.

(Sd.) C. D.

Designation as above.

FORM 4.

Omitted.

- (a) Address and description.
 (b) To be addressed to the officer or person in charge of the asylum.
 (c) Insert residence of patient.
 (d) Insert qualification to practise medicine and surgery registerable in the United
 Kingdom.
 (e) Insert place of examination.
 (f) Omit this where only one certificate is required.

FORM 5.

Reception Order in case of wandering or dangerous lunatics or lunatics not under proper control or cruelly treated (sent to an asylum established by Government.)

(See sections 14, 15.)

I, C. D., the District Magistrate of _____ or the sub-divisional Magistrate of _____ or a Magistrate specially empowered by Government under the Lunacy Act having caused A. B. to be examined by E. F., a Medical Officer under the Lunacy Act, and being satisfied that A. B. (*describing him*) is a lunatic who was wandering at large (*or is a person dangerous by reason of lunacy*) (*or is a lunatic not under proper care and control or is cruelly treated or neglected by the person having the care or charge of him*) and a proper person to be taken charge of and detained under care and treatment, hereby direct you to receive the said A. B. into your asylum.

(Sd.) C. D.

(Designation as above)

Dated the _____
To the officer incharge of the asylum at _____

FORM 6.

Same when sent to a licensed asylum.

I, C. D. (*as above down to "care and treatment"*) and being satisfied with the engagement entered into in writing by G. H. of (*here insert address and description*) who has desired that the said A. B. may be sent to the asylum at (*here insert description of asylum and name of the person in charge*) to pay the cost of maintenance of the said A. B., in the said asylum, hereby authorise you to receive the said A. B. into your asylum.

(Sd.) C. D.

(Designation as above)

Dated the _____

To the person incharge of the asylum at _____

FORM 7.

Bond on the making over of a lunatic to the care of relative or friend.

(See sections 14, 15.)

Whereas A. B., son of _____, inhabitant of _____, has been brought up before C. D., ^{District}_{Sub-divisional} Magistrate of _____, or a Magistrate of the first class specially empowered under the Lunacy Act and is a lunatic who is believed to be dangerous (*or deemed to be a lunatic who is not under proper care and control or is cruelly treated or neglected by the person having the charge of him*) and whereas I, E. F. son of _____, inhabitant of _____ have applied to the, Magistrate that the said A. B. may be delivered to my care:

I, E. F. above named hereby bind myself that on the said A. B. being made over to my care, I will have the said A. B. properly taken care of and prevented from doing injury to himself or to others: and in case of my making default therein, I hereby bind myself to forfeit to His Highness, the sum of rupees .

Dated this day of 19 .

(Sd.) E. F.

(Where a bond with sureties is to be executed add)—We do hereby declare ourselves sureties for the above named E. F. that he will, on the aforesaid A. B. being made over to his care, have the said A. B. properly taken care of and prevented from doing injury to himself or to others; and in the case of the said E. F. making default therein, we bind ourselves, jointly and severally to forfeit to His Highness, the the sum of rupees .

Dated this day of 19 .

(Signature.)

FROM 8.

Bond on the discharge of a lunatic from an asylum on the undertaking of relative or friend to take due care.

(See section 33.)

Whereas A. B., son of , inhabitant of
is a lunatic who is now detained in the asylum at
under an order made by C. D., or the ^{District} sub-divisional Magistrate of
 , or a Magistrate of the first class specially empowered under
the Lunacy Act under section 14 (or section 15) of the Lunacy Act and
whereas I, E. F. son of , of inhabitant of
have applied to the said Magistrate that the said A. B. may be delivered to my
care and custody:

I hereby bind myself that on the said A. B. being made over to my care and custody, I will have him properly taken care of and prevented from doing injury to himself or to others; and in case of my making default therein I hereby bind myself to forfeit to His Highness, the sum of rupees .

Dated this day of 19 .

(Sd.) E. F.

(Where a bond with sureties is to be executed add)—We do hereby declare ourselves sureties for the above named E. F. that he will, on the aforesaid A. B. being delivered to his care and custody, have the said A. B. properly taken care of and prevented from doing injury to himself or to others; and in case of the said E. F. making default therein, we bind ourselves jointly and severally to forfeit to His Highness' the sum of rupees .

Dated this day 19 .

(Signature.)

THE MAJORITY ACT, 1977**Act No. XXVI of 1977****CONTENTS.***Preamble.***SECTION.**

1. Omitted.

2. Savings.

SECTION.

3. Age of majority of persons domiciled in State.

4. Age of majority how computed,

THE MAJORITY ACT, 1977**Act No. XXVI of 1977.**

[Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No. 8372, dated 11th September, 1920 and State Council Resolution No. 1, dated 8th April 1925. (Notification No. 14-L/81).]

An Act to amend the law respecting the age of majority.

WHEREAS in the case of persons domiciled in the State, it is expedient to prolong the period of non-age, and to attain more uniformity and certainty respecting the age of majority than now exists; It is hereby enacted as follows:—

Preamble.

1. Omitted.

2. Nothing herein contained shall affect—

Savings.

- (a) the capacity of any person to act in the following matters (namely),—marriage, dower, divorce, and adoption;
- (b) the religion or religious rites and usages of any class of His Highness' subjects in the State; or
- (c) the capacity of any person who before this Act comes into force has attained majority under the law applicable to him.

3. Subject as aforesaid every minor of whose person or property or both, a guardian, other than a guardian for a suit within the meaning of order XXXII of the Code of Civil Procedure, has been or shall be appointed or declared by any Court of Justice before the minor has attained the age of eighteen years, and every minor of whose property the superintendence has been or shall be assumed by any Court of Wards before the minor has attained that age shall, notwithstanding anything contained in any other enactment, be deemed to have attained his majority when he shall have completed his age of twenty-one years and not before.

Subject as aforesaid, every other person domiciled in the State shall be deemed to have attained his majority when he shall have completed his age of eighteen years and not before.

4. In computing the age of any person, the day on which he was born is to be included as a whole day, and he shall be deemed to have attained majority, if he falls within the first paragraph of section 3, at the beginning of the twenty-first anniversary of that day, and if he falls within the second paragraph of section 3, at the beginning of the eighteenth anniversary of that day.

Illustrations.

(a) Z is born in the State on the first day of Baisakh 1950, and has a State domicile. A guardian of his person is appointed by a Court of Justice. Z attains majority at the first moment of the first day of Baisakh 1971.

(b) Omitted.

(c) Z is born on the first day of Baisakh 1950. He acquires a domicile in the State. No guardian is appointed of his person or property by any Court of Justice, nor is he under the jurisdiction of any Court of Wards. Z attains majority at the first moment of the first day of Baisakh 1968.

The NEGOTIABLE INSTRUMENTS ACT, 1977.**Act No. XXVII of 1977.****CONTENTS***Preamble.***SECTION.****CHAPTER I.****PRELIMINARY.**

1. Saving of usages relating to hundis, etc. Commencement.
2. Omitted.
3. Interpretation-clause.

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4. "Promissory note".
5. "Bill of exchange".
6. "Cheque".
7. "Drawer".
- "Drawee".
- "Drawee in case of need".
- "Acceptor".
- "Acceptor for honour".
- "Payee".
8. "Holder".
9. "Holder in due course".
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11. Inland instrument.
12. Foreign instrument.
13. "Negotiable instrument".

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17. Ambiguous instruments.
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19. Instruments payable on demand.
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21. "At sight".
"On presentment".
"After sight".
22. "Maturity"
Days of grace.
23. Calculating maturity of bill or note payable so many months after date or sight.
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25. When day of maturity is a holiday.

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26. Capacity to make, etc., promissory notes, etc. Minor.

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SECTION.

27. Agency.

28. Liability of agent signing.

29. Liability of legal representative signing.

30. Liability of drawer.

31. Liability of drawee of cheque.

32. Liability of maker of note and acceptor of bill.

33. Only drawee can be acceptor except in need for or honour.

34. Acceptance by several drawees not partners.

35. Liability of indorser.

36. Liability of prior parties to holder in due course.

37. Maker, drawer and acceptor principals.

38. Prior party a principal in respect of each subsequent party.

39. Suretyship.

40. Discharge of indorser's liability.

41. Acceptor bound although indorsement forged.

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47. Negotiation by delivery.

48. Negotiation by indorsement.

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50. Effect of indorsement.

51. Who may negotiate.

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53. Holder deriving title from holder in due course.

54. Instrument indorsed in blank.

55. Conversion of indorsement in blank into indorsement in full.

56. Indorsement for part of sum due.

57. Legal representative cannot by delivery only negotiate instrument indorsed by deceased.

58. Indorsement obtained by unlawful means or for unlawful consideration.

59. Instrument acquired after dishonour or when overdue. Accommodation note or bill.

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62. Presentment of promissory note for sight.
63. Drawee's time for deliberation.
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65. Hours for presentment.
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67. Presentment for payment of promissory note payable by instalments.
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69. Instrument payable at specified place.
70. Presentment where no exclusive place specified.
71. Presentment when maker, etc., has no known place of business or residence.
72. Presentment of cheque to charge drawer.
73. Presentment of cheque to charge any other person.
74. Presentment of instrument payable on demand.
75. Presentment by or to agent, representative of deceased, or assignee of insolvent.
- 75 A. Excuse for delay in presentment for payment.

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 79. Interest when rate specified.
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83. Discharge by allowing drawee more than twenty-four hours to accept.
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103. Protest for non-payment after dishonour by non-acceptance.

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THE NEGOTIABLE INSTRUMENT ACT, 1977.**Act No. XXVII of 1977.**

[Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No. 8,372, dated 11th September, 1940 and State Council Resolution No. 1, dated 8th April 1925. (Notification No. 14-L/81).]

An Act to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques.

Preamble. Whereas it is expedient to define and amend the law relating to promissory notes, bills of exchange and cheques; It is hereby enacted as follows :—

CHAPTER I.**PRELIMINARY.**

1. Nothing herein contained affects any local usage relating to any instrument in an oriental language: provided that such usages may be excluded by any words in the body of the instrument which indicate an intention that the legal relations of the parties thereto shall be governed by this Act.

Local extent. Saving of usages relating to hundis, etc.

2. Omitted.

Interpretation-clause.

3. In this Act—

“Banker” includes also persons or a corporation or company acting as bankers; and

“Notary public” includes also any person appointed by ¹[the Government] to perform the functions of a notary public under this Act.

CHAPTER II.**OF NOTES, BILLS AND CHEQUES.**

4. A “Promissory note” is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking, sign-

“Promissory note”.

¹Short title, extent and commencement are given and regulated by Act IV of 1977.

²In sections 3, 25, 138 and 139 the words “the Government” substituted for the words “His Highness” vide Act X of 1926 published in Government Gazette dated 15th Bhadon 1926.

ed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

Illustrations.

A signs instruments in the following terms:

- (a) "I promise to pay B or order Rs. 500".
- (b) "I acknowledge myself to be indebted to B in Rs. 1,000. to be paid on demand, for value received".
- (c) "Mr. B, I O Rs. 1,000."
- (d) "I promise to pay B Rs. 500 and all other sums which shall be due to him".
- (e) "I promise to pay B Rs. 500, first deducting thereout any money which he may owe me".
- (f) "I promise to pay B Rs. 500 seven days after my marriage with C".
- (g) "I promise to pay B Rs. 500 on D's death, provided D leaves me enough to pay that sum".
- (h) "I promise to pay Rs. 500 and to deliver to him my black horse on 1st January next".

The instruments respectively marked (a) and (b) are promissory notes. The instruments respectively marked (c), (d), (e), (f), (g) and (h) are not promissory notes.

5. A "bill of exchange" is an instrument in writing containing an unconditional order signed by the maker directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

A promise or order to pay is not "conditional", within the meaning of this section and section 4, by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.

The sum payable may be "certain", within the meaning of this section and section 4, although it includes future interest or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due.

The person to whom it is clear that the direction is given or that payment is to be made may be a "certain person", within the meaning of this section and section 4, although he is mis-named or designated by description only. A bill of exchange may include a Hundi.

6. A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.

6. The maker of a bill of exchange or cheque is called the "drawer"; the person thereby directed to pay is called "the drawee."

When in the bill or in any indorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need, such person is called a "Drawee in case of need."

After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same or given notice of such signing to the holder or to some person on his behalf, he is called the "acceptor".

When a bill of exchange has been noted or protested for non-acceptance or for better security and any person accepts it *supra protest* for honour of the drawer or of any one of the indorsers, such person is called an "Acceptor for honour".

The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the

"payee."

8. The "holder" of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto.

Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

9. "Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer,

or the payee or indorsee thereof, if payable to order before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

10. "Payment in due course" means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

11. A promissory note, bill of exchange or cheque drawn or made in the State, and made payable

[land instrument.

in, or drawn upon any person resident, in the State, shall be deemed to be an inland instrument.

12. Any such instrument not so drawn, made or made payable shall be deemed to be a foreign instrument.

Foreign instrument.

13. A 'negotiable instrument' means a promissory note, bill of exchange or cheque payable either to order or to bearer.

Negotiable instrument.

EXPLANATION (i)—A promissory note, bill of exchange or cheque is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable.

EXPLANATION (ii)—A promissory note, bill of exchange or cheque is payable to bearer which is expressed to be so payable or on which the only or last indorsement is an indorsement in blank.

EXPLANATION (iii)—Where a promissory note, bill of exchange or cheque either originally or by indorsement is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.

14. (1) When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated.

Negotiation.

(2) A negotiable instrument may be made payable to two or more payees jointly or it may be made payable in the alternative to one of two or one or some of several payees.

15. When the maker or holder of negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the "indorser."

Indorsement.

16. (1) If the indorser signs his name only, the indorsement is said to be "in blank", and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the indorsement is said to be "in full"; and the person so specified is called the indorsee of the instrument.

Indorsement "in blank" and "in full."

(2) The provisions of this Act relating to a payee shall apply with the necessary modifications to an indorsee.

17. Where an instrument may be construed either as a promissory note or bill of exchange the holder may at his election treat it as either, and the instrument shall be thenceforward treated accordingly.

"Indorsement."
Ambiguous instrument.

18. If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid.

Where amount is stated differently in figures and words.

19. A promissory note or bill of exchange, in which no time for payment is specified, and a cheque, are payable on demand.

Instruments payable on demand.

20. Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in the State, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives *prima facie* authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same to any holder in due course for such amount: Provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.

Inchoate stamped instruments

21. In a promissory note or bill of exchange the expressions "at sight" and "on presentment" mean on demand. The expression "after sight" means, in a promissory note, after presentment for sight, and, in a bill of exchange after acceptance, or noting for non-acceptance, or protest for non-acceptance.

"At sight."
On "presentment".
"After sight".

22. The maturity of a promissory note or bill of exchange is the date at which it falls due.

"Maturity."

Every promissory note or bill of exchange which is not expressed to be payable on demand, at sight or on presentment is at maturity on the third day after the day on which it is expressed to be payable.

Days of grace.

23. In calculating the date at which a promissory note or bill of exchange, made payable a stated number of months after date or after sight, or after a certain event, is at maturity, the period stated shall be held to terminate.

Calculating maturity of bill or note payable so many months after date or sight.

minate on the day of the month which corresponds with the day on which the instrument is dated, or presented for acceptance or sight, or noted for non-acceptance, or protested for non-acceptance, or the event happens, or, where the instrument is a bill of exchange made payable a stated number of months after sight and has been accepted for honour, with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month.

Illustrations.

(a) A negotiable instrument, dated 29th January, 1878, is made payable at one month after date. The instrument is at maturity on the third day after the 28th February, 1878.

(b) A negotiable instrument, dated 30th August, 1878, is made payable three months after date. The instrument is at maturity on the 3rd December, 1878.

(c) A promissory note or bill of exchange, dated 31st August, 1878, is made payable three months after date. The instrument is at maturity on the 3rd December, 1878.

24. In calculating the date at which a promissory note or bill of exchange made payable a certain number of days after date or after sight or after a certain event is at maturity, the day of date, or of presentment for acceptance or sight, or of protest for non-acceptance, or on which the event happens, shall be excluded.

Calculating maturity of bill or note payable so many days after date or sight.

25. When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day.

When day of maturity is a holiday

EXPLANATION.—The expression “public holiday” includes Sunday, New Year’s day, Christmas day: if either of such days falls on a Sunday, the next following Monday: Good Friday; and any other day declared by ¹[the Government.] by notification in the Jammu and Kashmir Government Gazette, to be a public holiday for the purposes of this Act.

CHAPTER III.

PARTIES TO NOTES, BILLS AND CHEQUES.

26. Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing,

Capacity to make, etc., promissory notes, etc.

¹See footnote under Section 8.

acceptance, indorsement, delivery and negotiation of a promissory note, bill of exchange or cheque.

Minor. A minor may draw, indorse, deliver and negotiate such instrument so as to bind all parties except himself.

Nothing herein contained shall be deemed to empower a corporation to make, indorse or accept such instruments except in cases in which, under the law for the time being in force, they are so empowered.

27. Every Person capable of binding himself or of being bound, as mentioned in section 26, may so bind himself or be bound by a duly authorised agent acting in his name.

Agency. A general authority to transact business and to receive and discharge debts does not confer upon an agent the power of accepting or indorsing bills of exchange so as to bind his principal.

An authority to draw bills of exchange does not of itself import an authority to indorse.

28. An agent who signs his name to a promissory note, bill of exchange or cheque without indicating thereon that he signs as agent, or that he does not intend thereby to incur personal responsibility, is liable personally on the instrument, except to those who induced him to sign upon the belief that the principal only would be held liable.

29. A legal representative of a deceased person who signs his name to a promissory note, bill of exchange or cheque is liable personally thereon unless he expressly limits his liability to the extent of the assets received by him as such.

30. The drawer of a bill of exchange or cheque is bound, in case of dishonour by the drawee or acceptor thereof, to compensate the holder, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.

31. The drawee of a cheque having sufficient funds of the drawer in his hands, properly applicable to the payment of such cheque must pay the cheque when duly required so to do, and in default of such payment, must compensate the drawer for any loss or damage caused by such default.

32. In the absence of a contract to the contrary, the maker of the promissory note and the acceptor before maturity of a bill of exchange are bound to pay the amount thereof at maturity

according to the apparent tenor of the note or acceptance respectively, and the acceptor of the bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand.

In default of such payment as aforesaid, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him and caused by such default.

33. No person except the drawee of a bill of exchange, or all or some of several drawees; or a person named therein as a drawee in case of need or an acceptor for honour, can bind himself by an acceptance.

Only drawee can be acceptor except in case of need or for honour.

34. Where there are several drawees of bill of exchange who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority.

Acceptance by several drawees not partners.

35. In the absence of a contract to the contrary, whoever indorses and delivers a negotiable instrument before maturity, without, in such indorsement, expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder, in case of dishonour by the drawee, acceptor or maker to compensate such holder for any loss or damage caused to him by such dishonour, provided due notice of dishonour has been given to, or received by such indorser as hereinafter provided.

Liability of indorser.

Every indorser after dishonour is liable as upon an instrument payable on demand.

36. Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.

Liability of prior parties to holder in due course.

37. The maker of a promissory note or cheque, the drawer of a bill of exchange until acceptance, and the acceptor are, in the absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer or acceptor, as the case may be.

Maker, drawer and acceptor principals.

38. As between the parties so liable as sureties, each prior party is, in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party.

Prior party a principal in respect of each subsequent party.

Illustration.

A draws a bill payable to his own order on B who accepts. A afterwards indorses the bill to C, C to D and D. to E. As between E and B, B is the principal debtor.

pal debtor, and A, C and D are his sureties. As between E and A, A is principal debtor, and C and D are his sureties. As between E and C, C is the principal debtor and D is his surety.

39. When the holder of an accepted bill of exchange enters into any contract with the acceptor which under section 134 or 135 of the Contract Act would discharge the other parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged.

40. Where the holder of a negotiable instrument without the consent of the indorser, destroys or impairs the indorser's remedy against a prior party, the indorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity.

Illustration.

A is the holder of a bill of exchange made payable to the order of B, which contains the following indorsements in blank,

First indorsement, "B,"

Second indorsement, "Peter Williams,"

Third indorsement, "Wright and Co.,"

Fourth indorsement, "John Rozario".

This bill A puts in suit against John Rozario and strikes out, without John Rozario's consent, the indorsements by Peter Williams and Wright and Co. A is not entitled to recover anything from John Rozario.

41. An acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such indorsement is forged, if he knew or had reason to believe the indorsement to be forged when he accepted the bill.

42. An acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an indorsement by the same hand as the drawer's signature, and purporting to be made by the drawer.

43. A negotiable instrument made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without indorsement to a holder, for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

EXCEPTION I.—No party for whose accommodation a negotiable instrument has been made, drawn, accepted or indorsed can, if he had paid the amount thereof recover thereon such amount from any person who became a party to such instrument for his accommodation.

EXCEPTION II.—No party to the instrument who has induced any other party to make, draw, accept, indorse or transfer the same to him for a consideration which he has failed to pay or perform in full shall recover thereon an amount exceeding the value of the consideration (if any) which he has actually paid or performed.

44. When the consideration for which a person signed a promissory note, bill of exchange or cheque consisted of money, and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Partial absence or failure of money-consideration.

EXPLANATION.—The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange or cheque stands in immediate relation with the payee, and the indorser with his indorsee. Other signers may by agreement stand in immediate relation with a holder.

Illustration.

A draws a bill on B for Rs. 500 payable to the order of A. B accepts the bill, but subsequently dishonours it by non-payment. A sues B on the bill. B proves that it was accepted for value as to Rs. 400, and as an accommodation to the plaintiff as to the residue. A can only recover Rs. 400.

45. Where a part of the consideration for which a person signed a promissory note, bill of exchange or cheque, though not consisting of money, is ascertainable in money without collateral enquiry, and there has been a failure of that part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Partial failure of consideration not consisting of money.

45-A. Where a bill of exchange has been lost before it is over-due, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

Holder's right to duplicate of lost bill.

If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so.

CHAPTER IV.

OF NEGOTIATION.

46. The making, acceptance or indorsement of a promissory note, bill of exchange or cheque is completed by delivery, actual or constructive.

Delivery.

As between parties standing in immediate relation delivery to be effectual must be made by the party making, accepting or indorsing the instrument, or by a person authorised by him in that behalf.

As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.

A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof.

A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof.

47. Subject to the provisions of section 58 a promissory note bill of exchange or cheque payable to bearer is negotiable by delivery thereof.

Negotiation by delivery.

EXCEPTION.—A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens.

Illustrations.

(a) A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. The instrument has been negotiated.

(b) A, the holder of a negotiable instrument payable to bearer, which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so, and accordingly now possesses the instrument as B's agent. The instrument has been negotiated, and B has become the holder of it.

48. Subject to the provision of section 58 a promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof.

Negotiation by indorsement.

49. The holder of a negotiable instrument indorsed in blank may, without signing his name, by writing above the indorser's signature a direction to pay to any other person as

Conversion of indorsement in blank into indorsement in full.

indorsee, convert the indorsement in blank into an indorsement in full; and the holder does not thereby incur the responsibility of an indorser.

50. The indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation; but the indorsement may, by express words, restrict or exclude such right, or may merely constitute the indorsee an agent to indorse the instrument, or to receive its contents for the indorser or for some other specified person.

Effect of indorsement.

Illustrations.

B signs the following indorsements on different negotiable instruments payable to bearer:—

- (a) "Pay the contents to C only".
- (b) "Pay C for my use."
- (c) "Pay C or order for the account of B".
- (d) "The within must be credited to C".

These indorsements exclude the right of further negotiation by C.

- (e) "Pay C."
- (f) "Pay C value in account with the Oriental Bank."
- (g) "Pay the contents to C, being part of the consideration in a certain deed of assignment executed by C to the indorser and others."

These indorsements do not exclude the right of further negotiation by C.

51. Every sole maker, drawer, payee or indorsee or all of several joint makers, drawers, payees or indorsees, of a negotiable instrument may, if the negotiability of such instrument has not been restricted or excluded as mentioned in section 50, indorse and negotiate the same.

Who may negotiate.

EXPLANATION.—Nothing in this section enables a maker or drawer to indorse or negotiate an instrument, unless he is in lawful possession or is holder thereof; or enables a payee or indorsee to indorse or negotiate an instrument, unless he is holder thereof.

Illustration.

A bill is drawn payable to A or order. A indorses it to B the indorsement not containing the words "or order" or any equivalent words. B may negotiate the instrument.

52. The indorser of a negotiable instrument may, by express words in the indorsement, exclude his own liability thereon, or make such liability or the right of the indorsee to receive the amount due thereon depend upon the happening of a specified event, although such event may never happen.

Indorser who exclude his own liability or makes it conditional.

Where an indorser so excludes his liability and afterwards

becomes the holder of the instrument, all intermediate indorsers are liable to him.

Illustrations.

(a) The indorser of a negotiable instrument signs his name adding the words—

“Without recourse.”

Upon this indorsement he incurs no liability.

(b) A is the payee and holder of a negotiable instrument. Excluding personal liability by an indorsement “without recourse,” he transfers the instrument to B, and B indorses it to C, who indorses it to A. A is not only reinstated in his former rights, but has the rights of an indorsee against B and C.

53. A holder of a negotiable instrument who derives title from a holder in due course has the rights thereon of that holder in due course.

54. Subject to the provisions hereinafter contained as to crossed cheques, a negotiable instrument indorsed in blank is payable to the bearer thereof even although originally payable to order.

55. If a negotiable instrument after having been indorsed in blank is indorsed in full, the amount if it cannot be claimed from the indorser in full, except by the person to whom it has been indorsed in full, or by one who derives title through such person.

56. No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument; but, where such amount has been partly paid, a note to that effect may be indorsed on the instrument, which may then be negotiated for the balance.

57. The legal representative of a deceased person cannot negotiate by delivery only a promissory note, bill of exchange or cheque payable to order and indorsed by the deceased but not delivered.

58. When a negotiable instrument has been lost or has been obtained from any maker, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or indorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor or holder, or from any party, prior to such holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course.

59. The holder of a negotiable instrument, who has ^{Instrument acquired} acquired it after dishonour, whether by ^{after dishonour or when} non-acceptance or non-payment, with notice ^{overdue.} thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor:

Provided that any person who, in good faith and for ^{Accommodation note or} consideration, becomes the holder, after ^{bill.} maturity, of a promissory note or bill of exchange made, drawn or accepted without consideration, for the purpose of enabling some party thereto to raise money thereon, may recover the amount of the note or bill from any prior party.

Illustration.

The acceptor of a bill of exchange, when he accepted it, deposited with the drawer certain goods as a collateral security for the payment of the bill, with power to the drawer to sell the goods and apply the proceeds in discharge of the bill if it were not paid at maturity. The bill not having been paid at maturity, the drawer sold the goods and retained the proceeds but indorsed the bill to A. A's title is subject to the same objection as the drawer's title.

60. A negotiable instrument may be negotiated (except ^{Instrument negotiable} by the maker, drawee or acceptor after ^{till payment or satisfaction.} maturity) until payment or satisfaction thereof by the maker, drawee or acceptor at or after maturity, but not after such payment or satisfaction.

CHAPTER V.

OF PRESENTMENT.

61. A bill of exchange payable after sight must, if no ^{Presentment for acceptance.} time or place is specified therein for presentment, be presented to the drawee thereof for acceptance, if he can, after reasonable search, be found, by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

If the drawee cannot, after reasonable search, be found, the bill is dishonoured.

If the bill is directed to the drawee at a particular place, it must be presented at that place; and, if at the due date for presentment he cannot, after reasonable search, be found there, the bill is dishonoured.

Where authorised by agreement or usage, a presentment

through the post office by means of a registered letter is sufficient.

62. A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if he can, after reasonable search, be found) by a person entitled to demand payment, within a reasonable time after it is made and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

63. The holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee ¹[forty-eight] hours (exclusive of public holidays) to consider whether he will accept it.

64. Promissory notes, bills of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder.

Where authorised by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.

EXCEPTION.—Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

65. Presentment for payment must be made during the usual hours of business, and, if at a banker's, within banking hours.

66. A promissory note or bill of exchange made payable at a specified period after date or sight thereof, must be presented for payment at maturity.

67. A promissory note payable by instalments must be presented for payment on the third day after the date fixed for payment of each instalment; and non-payment of such presentment has the same effect as non-payment of a note at maturity.

68. A promissory note, bill of exchange or cheque made, drawn or accepted payable at a specified place and not elsewhere must, in order to charge any party thereto, be presented for payment at that place.

69. A promissory note or bill of exchange, made, drawn Instrument payable at specified place. or accepted payable at a specified place must, in order to charge the maker or drawer thereof, be presented for payment at that place.

70. A promissory note or bill of exchange not made Presentment where no exclusive place, specified. payable as mentioned in sections 68 and 69, must be presented for payment at the place of business (if any), or at the usual residence, of the maker, drawee or acceptor thereof, as the case may be.

71. If the maker, drawee or acceptor of a negotiable Presentment when maker, etc., has no known place of business or residence. instrument has no known place of business or fixed residence, and no place is specified in the instrument for presentment for acceptance or payment, such presentment may be made to him in person wherever he can be found.

72. Subject to the provisions of section 84 a cheque Presentment of cheque to charge drawer. must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer.

73. A cheque must, in order to charge any person except Presentment of cheque to charge any other person. the drawer, be presented within a reasonable time after delivery thereof by such person.

74. Subject to the provisions of section 31, a negotiable Presentment of instrument payable on demand. instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.

75. Presentment for acceptance or payment may be made Presentment by or to agent representative of deceased or assignee of insolvent. to the duly authorised agent of the drawee, maker or acceptor, as the case may be, or, where the drawee, maker or acceptor, has died, to his legal representative, or, where he has been declared an insolvent, to his assignee.

75-A. Delay in presentment for payment is excused if Excuse for delay in presentment for payment. the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made within a reasonable time.

76. No presentment for payment is necessary, and the When presentment unnecessary. instrument is dishonoured at the due date for presentment, in any of the following cases :—

(a) if the maker, drawee or acceptor intentionally

¹ Section 75-A added vide Act 14 of 1983 published in Government Gazette dated 12th Oct 1983.

prevents the presentment of the instrument, or,

if the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or,

if the instrument being payable at some other specified place, neither he nor any person authorised to pay it attends at such place during the usual business hours, or,

if the instrument not being payable at any specified place, he cannot after due search be found ;

(b) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment ;

(c) as against any part if, after maturity, with knowledge that the instrument has not been presented—

he makes a part payment on account of the amount due on the instrument,

or promises to pay the amount due thereon in whole or in part,

or otherwise waives his right to take advantage of any default in presentment for payment ;

(d) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

77. When a bill of exchange accepted payable at a specified bank, has been duly presented there for payment and dishonour, if the banker so negligently or improperly keeps, deals with or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss.

Liability of banker for negligently dealing with bill presented for payment.

CHAPTER VI.

OF PAYMENT AND INTEREST.

78. Subject to the provisions of section 82, clause (c), payment of the amount due on a promissory note, bill of exchange or cheque must in order to discharge the maker or acceptor, be made to the holder of the instrument.

To whom payment should be made.

79. When interest at a specified rate is expressly made payable on a promissory note or bill of exchange interest shall be calculated at the rate specified, on the amount of the principal money due thereon, from the date of the instrument, until tender or realisation of such amount, or until such date after the institution of a suit to recover such amount as the Court directs.

Interest when rate specified.

80. When no rate of interest is specified in the instrument, interest on the amount due thereon shall [notwithstanding any agreement relating to interest between any parties to the instrument] be calculated at the rate of six per centum, from the date at which the same ought to have been paid by the party charged, until tender or realisation of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs.

EXPLANATION.—When the party charged is the indorser of an instrument dishonoured by non-payment he is liable to pay interest only from the time that he receives notice of the dishonour

81. Any person liable to pay, and called upon by the holder thereof to pay, the amount due on a promissory note, bill of exchange or cheque is before payment entitled to have it shown, and is on payment entitled to have it delivered up, to him, or, if the instrument is lost or cannot be produced to be indemnified against any further claim thereon against him.

CHAPTER VII.

OF DISCHARGE FROM LIABILITY OF NOTES, BILLS AND CHEQUES.

82. The maker, acceptor or indorser respectively of negotiable instrument is discharged from liability thereon—

(a) to a holder thereof who cancels such acceptor's or indorser's name with intent to discharge him, and to all parties claiming under such holder;

(b) to a holder thereof who otherwise discharges such maker, acceptor or indorser, and to all parties deriving title under such holder after notice of such discharge;

(c) to all parties thereto, if the instrument is payable to bearer, or has been indorsed in blank, and such maker, acceptor or indorser makes payment in due course of the amount due thereon.

83. If the holder of a bill of exchange allows the drawee more than ^{Discharge by allowing drawee more than forty-eight hours to accept.} ^{more than} ^{1[forty-eight]} hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder.

84. (1) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or person on whose account it is drawn had the right, at the time when presentment ought to have been made, as between himself and the banker, to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of the banker to a larger amount than he would have been if such cheque had been paid.

(2) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.

(3) The holder of the cheque as to which such drawer or person is so discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge and entitled to recover the amount from him.

Illustrations.

(a) A draws a cheque for Rs. 1,000, and, when the cheque ought to be presented, has funds at the bank to meet it. The bank fails before the cheque is presented. The drawer is discharged, but the holder can prove against the bank for the amount of the cheque.

(b) A draws a cheque at Umballa on a bank in Calcutta. The bank fails before the cheque could be presented in ordinary course. A is not discharged, for he has not suffered actual damage through any delay in presenting the cheque.

85. Where a cheque payable to order purports to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course.

86. If the holder of a bill of exchange acquiesces in a qualified acceptance, or one limited to part of the sum mentioned in the bill or which substitutes different place or time for payment, or which, where the drawees are not partners, is not signed by all the drawees, all previous parties whose consent is not obtained to such acceptance, are discharged as against

the holder and those claiming under him, unless on notice given by the holder they assent to such acceptance.

EXPLANATION.—An acceptance is qualified—

(a) where it is conditional, declaring the payment to be dependent on the happening of an event therein stated ;

(b) where it undertakes the payment of part only of the sum order to be paid ;

(c) where, no place of payment being specified on the order, it undertakes the payment at a specified place ; and not otherwise or elsewhere ; or where, a place of payment being specified in the order, it undertakes the payment at not otherwise or elsewhere ;

(d) where it undertakes the payment at a time other than that at which under the order it would be legally due.

87. Any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties ;

and any such alteration, if made by an indorsee discharges his indorser from all liability to him in respect of the consideration thereof.

The provisions of this section are subject to those of sections 20, 49, 86 and 125.

88. An acceptor or indorser of a negotiable instrument is bound notwithstanding any previous alteration of the instrument.

89. Where a promissory note, bill of exchange or cheque has been materially altered but does not appear to have been so altered,

or where a cheque is presented for payment which does not at the time of presentation appear to be crossed or to have had a crossing which has been obliterated,

payment thereof by a person or banker liable to pay, and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such person or banker from all liability therein ; and such payment shall not be questioned by reason of the instrument of having been altered or the cheque crossed.

90. If a bill of exchange which has been negotiated is, at or after maturity, held by the acceptor in his own right, all rights of action thereon are extinguished.

CHAPTER VIII.

OF NOTICE OF DISHONOUR.

91. A bill of exchange is said to be dishonoured by non-acceptance when the drawee, or one of several drawees not being partners, makes default in acceptance upon being duly required to accept the bill or where presentment is excused and the bill is not accepted.

Where the drawee is incompetent to contract, or the acceptance is qualified, the bill may be treated as dishonoured.

92. A promissory note, bill of exchange or cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment upon being duly required to pay the same.

93. When a promissory note, bill of exchange or cheque is dishonoured by non-acceptance or non-payment, the holder thereof, or some party thereto who remains liable thereon, must give notice that the instrument has been so dishonoured to all other parties whom the holder seeks to make severally liable thereon, and to some one of several parties whom he seeks to make jointly liable thereon.

Nothing in this section renders it necessary to give notice to the maker of the dishonoured promissory note or the drawee or acceptor of the dishonoured bill of exchange or cheque.

94. Notice of dishonour may be given to a duly authorised agent of the person to whom it is required to be given, or, where he has died, to his legal representative, or, where he has been declared an insolvent, to his assignee; may be oral or written; may, if written, be sent by post, and may be in any form; but it must inform the party to whom it is given, either in express terms or by reasonable intendment, that the instrument has been dishonoured, and in what way, and that he will be held liable thereon; and it must be given within a reasonable time after dishonour, at the place of business or (in case such party has no place of business) at the residence of the party for whom it is intended.

If the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid.

95. Any party receiving notice of dishonour must, in order to render any prior party liable to himself, give notice of dishonour to such party within a reasonable time, unless such party

otherwise receives due notice as provided by section 93.

96. When the instrument is deposited with an agent for presentment, the agent is entitled to the same time to give notice to his principal as if he were the holder giving notice of dishonour, and the principal is entitled to a further like period to give notice of dishonour.

97. When the party to whom notice of dishonour is despatched is dead, but the party despatching the notice is ignorant of his death, the notice is sufficient.

98. No notice of dishonour is necessary—

(a) when it is dispensed with by the party entitled thereto ;

(b) in order to charge the drawer when he has countermanded payment ;

(c) when the party charged could not suffer damage for want of notice ;

(d) when the party entitled to notice cannot after due search be found ; or the party bound to give notice is, for any other reason, unable without any fault of his own to give it ;

(e) to charge the drawers when the acceptor is also a drawer ;

(f) in the case of promissory note which is not negotiable ;

(g) when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

CHAPTER IX.

OF NOTING AND PROTEST.

99. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each.

Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reasons, if any, assigned for such dishonour, or, if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges.

100. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest.

Protest. When the acceptor of a bill of exchange has become insolvent or his credit has been publicly impeached, before the maturity of the bill the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor, and on its being refused may, within a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

101. A protest under section 100 must contain—

Contents of protest. (a) either the instrument itself, or a literal transcript of the instrument and of everything written or printed there upon;

(b) the name of the person for whom and against whom the instrument has been protested;

(c) a statement that payment or acceptance, or better security, as the case may be, has been demanded of such person by the notary public; the terms of his answer, if any, or a statement that he gave no answer, or that he could not be found;

(d) when the note or bill has been dishonoured, the place and time of dishonour, and, when better security has been refused, the place and time of refusal;

(e) the subscription of the notary public making the protest;

(f) in the event of an acceptance for honour or of a payment for honour, the name of the person by whom, of the person for whom, and the manner in which, such acceptance or payment was offered and effected.

A notary public may make the demand mentioned in clause (c) of this section either in person or by his clerk or, where authorised by agreement or usage, by registered letter.

102. When a promissory note or bill of exchange is required by law to be protested, notice of such protest must be given instead of notice of dishonour, in the same manner and subject to the same conditions; but the notice may be given by the notary public who makes the protest.

103. All bills of exchange drawn payable at some other place than the place mentioned as the residence of the drawee, and which are dishonoured by non-acceptance, may, without

Protest for non-payment after dishonour by non-acceptance.

further presentment to the drawee, be protested for non-payment in the place specified for payment, unless paid before or at maturity.

104. Foreign bills of exchange must be protested for dishonour when such protest is required by the law of the place where they are drawn.

Protest of foreign bills.

104-A. For the purposes of this Act where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding; and the formal protest may be extended at any time thereafter as of the date of the noting.

When noting equivalent to protest.

CHAPTER X.

OF REASONABLE TIME.

105. In determining what is a reasonable time for presentment for acceptance or payment, for giving notice of dishonour and for noting, regard shall be had to the nature of the instrument and the usual course of dealing with respect to similar instrument; and in calculating such time, public holidays shall be excluded.

Reasonable time.

106. If the holder and the party to whom notice of dishonour is given carry on business or live (as the case may be) in different places, such notice is given within a reasonable time if it is despatched by the next post or on the day next after the day of dishonour.

If the said parties carry on business or live in the same place, such notice is given within a reasonable time if it is despatched in time to reach its destination on the day next after the day of dishonour.

107. A party receiving notice of dishonour, who seeks to enforce his right against a prior party transmits the notice within the reasonable time if he transmits it within the same time after its receipt as he would have had to give notice if he had been the holder.

Reasonable time for transmitting such notice.

CHAPTER XI.

OF ACCEPTANCE AND PAYMENT FOR HONOUR AND
REFERENCE IN CASE OF NEED.

108. When a bill of exchange has been noted or protested for non-acceptance or for better security, any person not being a party already liable thereon may, with the consent of the holder, by writing on the bill, accept the same for the honour of any party thereto.

Acceptance for honour.

109. A person desiring to accept for honour must, by writing on the bill under his hand declare that he accepts under protest the protested bill for the honour of the drawer or of a particular indorser whom he names, or generally for honour.

How acceptance for honour must be made.

110. Where the acceptance does not express for whose honour it is made, it shall be deemed to be made for the honour of the drawer.

Acceptance not specifying for whose honour it is made.

111. An acceptor for honour binds himself to all parties subsequent to the party for whose honour he accepts to pay the amount of the bill if the drawee do not ; and such party and all prior parties are liable in their respective capacities to compensate the acceptors for honour for all loss or damage sustained by him in consequence of such acceptance.

But an acceptor for honour is not liable to the holder of the bill unless it is presented (or in case the address given by such acceptor on the bill is a place other than the place where the bill is made payable), forwarded for presentment, not later than the day next after the day of its maturity.

112. An acceptor for honour cannot be charged unless the bill has at its maturity been presented to the drawee for payment, and has been dishonoured by him, and noted or protested for such dishonour.

When acceptor for honour may be charged.

113. When a bill of exchange has been noted or protested for non-payment, any person may pay the same for the honour of any party liable to pay the same provided that the person so paying or his agent in that behalf has previously declared before a notary public the party for whose honour he pays, and that such declaration has been recorded by such notary public.

Payment for honour.

114. Any person so paying is entitled to all the rights, in respect of the bill of the holder at the time of such payment, and may recover from the party for whose honour he pays all sums so paid, with interest thereon and with all expenses properly incurred in making such payment.

115. Where a drawee in case of need is named in a bill of exchange, or in any indorsement thereon the bill is not dishonoured until it has been dishonoured by such drawee.

116. A drawee in case of need may accept and pay the bill of exchange without previous protest.

CHAPTER XII.

OF COMPENSATION.

117. The compensation payable in case of dishonour of a promissory note, bill of exchange or cheque, by any party liable to the holder or any indorsee shall be determined by the following rules :—

(a) the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it;

(b) when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places ;

(c) an indorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at six per centum per annum from the date of payment until tender or realisation thereof; together with all expenses caused by the dishonour and payment;

(d) When the person charged and such indorser reside at different places, the indorser is entitled to receive such sum at the current rate of exchange between the two places;

(e) the party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured and the protest thereof

(if any). If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

CHAPTER XIII.

SPECIAL RULES OF EVIDENCE.

118. Until the contrary is proved, the following presumptions shall be made :—
Presumption as to negotiable instruments—

(a) that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration;

(b) that every negotiable instrument bearing a date was made or drawn on such date;
as to date ;

(c) that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;
as to time of acceptance ;

(d) that every transfer of a negotiable instrument was made before its maturity;
as to time of transfer ;

(e) that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;
as to order of indorsement ;

(f) that a last promissory note, bill of exchange or cheque was duly stamped;
as to stamp ;

(g) that the holder of a negotiable instrument is a holder in due course : Provided that where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration the burthen of proving that the holder is a holder in due course lies upon him.

119. In a suit upon an instrument which has been dishonoured, the Court shall, on proof of the protest, presume the fact of dishonour, unless and until such fact is disproved.
Presumption on proof of protest.

120. No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange for the honour of the drawer shall, in suit thereon by a holder in due course be permitted to deny the validity of the instrument as originally made or drawn.

121. No maker of a promissory note and no acceptor of a bill of exchange payable to order shall in a suit thereon by a holder in due course be permitted to deny the payee's capacity, at the date of the note or bill, to indorse the same.

122. No indorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instrument.

CHAPTER XIV.

OF CROSSED CHEQUES.

123. Where a cheque bears across its face an addition of the words "and company" or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words "not negotiable" that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.

124. Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable", that addition shall be deemed a crossing, and cheque shall be deemed to be crossed specially, and to be crossed to that banker.

125. Where a cheque is uncrossed the holder may cross it generally or specially.

Where cheque is crossed generally, the holder may cross it specially.

Where a cheque is crossed generally or specially, the holder may add the words "not negotiable".

Where a cheque is crossed specially, the banker to whom it is crossed may again, cross it specially to another banker, his agent, for collection.

126. Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.

Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed or his agent for collection.

127. Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.

128. Where the banker on whom a crossed cheque is drawn has paid the same in due course, the banker paying the cheque, and (in case such cheque has come to the hands of the payee) the drawer thereof, shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to and placed in if the amount of the cheque had been paid to and received by the true owner thereof.

129. Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

130. A person taking a cheque crossed generally or specially, bearing in either case the words "not negotiable", shall not have, and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had.

131. A banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment.

¹[EXPLANATION. A banker receives payment of a crossed cheque for a customer within the meaning of this section notwithstanding that he credits his customers account with the amount of the cheque before receiving payment thereof.]

CHAPTER XV.

OF BILLS IN SETS.

132. Bills of exchange may be drawn in parts, each part being numbered and containing a provision that it shall continue payable only so long as the others remain unpaid. All the parts together make a set; but the whole set constitutes only one bill and is extinguished when one of the parts, if a separate bill, would be extinguished.

Set of bills.

EXCEPTION.—When a person accepts or indorses different parts of the bill in favour of different persons, he and the subsequent indorsers of each part are liable on such part as if it were a separate bill.

133. As between holders in due course of different parts of the same set he who first acquired title to his part is entitled to the other parts and the money represented by the bill.

Holder of first acquired part entitled to all.

CHAPTER XVI.

OF INTERNATIONAL LAW.

134. In the absence of a contract to the contrary, the liability of the maker or drawer of a foreign promissory note, bill of exchange or cheque is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and indorsers by the law of the place where the instrument is made payable.

Law governing liability of maker, acceptor or indorser of foreign instrument.

Illustration.

A bill of exchange was drawn by A in California, where the rate of interest is 25 per cent, and accepted by B, payable in Washington, where the rate of interest is 6 per cent. The bill is indorsed in the State, and is dishonoured. An action on the bill is brought against B in the State. He is liable to pay interest at the rate of 6 per cent. only; but, if A is charged as drawer, A is liable to pay interest at the rate of 25 per cent.

135. Where a promissory note, bill of exchange or cheque is made payable in a different place from that in which it is made or indorsed, the law of the place where it is made payable determines what constitutes dishonour and what notice of dishonour is sufficient.

Law of place of payment governs dishonour.

Illustration.

A bill of exchange drawn and indorsed in the State, but accepted payable in France, is dishonoured. The indorse causes it to be protested for such dishonour, and gives notice thereof in accordance with the law of France, though not in accordance with the rules herein contained in respect of bills which are not foreign. The notice is sufficient.

136. If a negotiable instrument is made, drawn, accepted or indorsed out of British India, but in accordance with the law of the State, the circumstance that any agreement evidenced by such instrument is invalid according to the law of the country wherein it was entered into does not invalidate any subsequent acceptance or indorsement made thereon in the State.

137. The law of any foreign country regarding promissory notes, bills of exchange and cheques shall be presumed to be the same as that of the State unless and until the contrary is proved.

CHAPTER XVII.

NOTARIES PUBLIC.

138. ¹[The Government] may, from time to time, by notification in the Jammu and Kashmir Government Gazette, appoint any person, by name or by virtue of his office to be a notary public under this Act and to exercise his functions as such within any local area, and may, by like notification, remove from office any notary public appointed under this Act.

139. ¹[The Government] may, from time to time, by notification in the Jammu and Kashmir Government Gazette, make rules consistent with this Act for the guidance and control of notaries public appointed under this Act, and may, by such rules (among other matters), fix the fees payable to such notaries.

THE PUBLIC SERVANTS (INQUIRIES) ACT 1977.**Act No. XXVIII of 1977.****CONTENTS.***Preamble.***SECTION.****SECTION.**

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THE PUBLIC SERVANTS (INQUIRIES) ACT, 1977**Act No. XXVIII of 1977.**

[Sanctioned by His Highness the Maharaja Sahib Bhadur per Chief Minister's endorsement No. 8372, dated 11th September 1920 and State Council Resolution No. 1, dated 8th April, 1925, (Notification No. 14-L-81).]

For regulating inquiries into the behaviour of Public Servants.

WHEREAS it is expedient to amend the law for regulating inquiries into the behaviour of public servants not removable from their appointments without the sanction of His Highness or any of his Ministers, and to make the same uniform throughout the territories under His Highness; It is enacted as follows:—

¹1. Omitted.

2. Whenever the Government shall be of opinion that

Articles of charge to be drawn out for public inquiry into conduct of certain public servants.

there are good grounds for making a formal and public inquiry into the truth of any imputation of mis-behaviour by any person in the service of the Government

not removable from his appointment without the sanction of His Highness or any of his Ministers, it shall cause the substance of the imputations to be drawn into distinct articles of charge, and shall order a formal and public inquiry to be made into the truth thereof.

3. The inquiry may be committed either to the Court,

Authorities to whom inquiry may be committed.
Notice to accused.

Board or other authority to which the person accused is subordinate, or to any other person or persons, to be specially

appointed by the Government, commissioners for the purpose: notice of which commission shall be given to the person accused ten days at least before the beginning of the inquiry.

4. When the Government shall think fit to conduct the

Conduct of Government prosecution.

prosecution, it shall nominate some person to conduct the same on its behalf.

5. When the charge shall be brought by an accuser

Charge by accuser to be written and verified.

the Government shall require the accusation to be reduced to writing and verified by the oath or solemn affirmation of the accuser; and every person who shall wilfully and maliciously make any false

Penalty for false accusation.

accusation under this Act upon such oath or affirmation, shall be liable to the penalties of perjury; but this enactment shall not be construed to prevent the Government from instituting any inquiry which it shall think fit, without such accusation on oath or solemn affirmation as aforesaid.

6. Where the imputations shall have been made by an accuser, and the Government shall think fit to leave to him the conduct of the prosecution, the Government before appointing the commission shall require him to furnish reasonable security that he will attend and prosecute the charge thoroughly and effectually, and also will be forthcoming to answer any countercharge or action which may be afterwards brought against him for malicious prosecution or perjury or subordination of perjury as the case may be.

7. At any subsequent stage of the proceedings, the Government may, if it think fit, abandon the prosecution and in such case may, if it think fit, on the application of the accuser, allow him to continue the prosecution if he is desirous of so doing, on his furnishing such security as is hereinbefore mentioned.

8. The commissioners shall have the same power of punishing contempts and obstructions to their proceedings, as is given to Civil and Criminal Courts by the Code of Criminal Procedure, and shall have the same powers for the summons of witnesses, and for compelling the production of documents and for the discharge of their duty under the commission, and shall be entitled to

the same protection as the District and subordinate Judges, except that all process to cause the attendance of witnesses or other compulsory process shall be served through and executed by the District or Subordinate Judge in whose jurisdiction the witness or other person resides, on

whom the process is to be served. When the commission has been issued to a Court, or other person or persons having power to issue such process in the exercise of their ordinary authority, they may also use all such power for the purposes of the commission.

9. All persons disobeying any lawful process issued as aforesaid for the purposes of the commission shall be liable to the same penalties as if the same had issued originally from the Court or other authority through whom it is executed.

10. A copy of the articles of charge, and list of the documents and witnesses by which each charge is to be sustained, shall be delivered to the person accused, at least three days before the beginning of the inquiry, exclusive of the day of delivery and the first day of the inquiry.

11. At the beginning of the inquiry the prosecutor shall exhibit the articles of charge to the commissioners, which shall be openly read, and the person accused shall thereupon be required to plead "guilty" "or not guilty" to each of them, which pleas shall be forthwith recorded with the articles of charge. If the person

Copy of charge and list to be furnished to accused.
Procedure at beginning of inquiry.
Non-appearance of accused and admission of charge.

accused refuses, or without reasonable cause neglects, to appear to answer the charge either personally or by his counsel or agent, he shall be taken to admit the truth of the articles of charge.

12. The prosecutor shall then be entitled to address the commissioners in explanation of the articles of charge, and of the evidence by which they are to be proved : his address shall not be recorded.

13. The oral and documentary evidence for the prosecution shall then be exhibited : the witnesses shall be examined by or on behalf of the prosecutor and may be cross-examined by or on behalf of the person accused. The prosecutor shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without leave of the commissioners, who also may put such questions as they think fit.

14. If it shall appear necessary before the close of the case for the prosecution, the commissioners may in their discretion allow the prosecutor to exhibit evidence not included in the list

Prosecutor's right of address.
Evidence for prosecution and examination of witnesses.
Re-examination by prosecutor.

given to the person accused or may themselves call for new evidence ; and in such case the person accused shall be entitled to have, if he demand it, an adjournment of the proceedings for three clear days, before the exhibition of such new evidence exclusive of the day of adjournment and of the day to which the proceedings are adjourned.

Power to admit or call for new evidence or prosecution.
Accused's right to adjournment.

15. When the case for the prosecution is closed, the person accused shall be required to make his defence, orally or in writing, as he shall prefer. If made orally it shall not be recorded ; if made

Defence of accused.

To be recorded only when written, in writing, it shall be recorded, after being openly read, and in that case a copy shall be given at the same time to the prosecutor.

16. The evidence for the defence shall then be exhibited, and the witnesses examined, who shall be liable to cross-examination and re-examination and to examination by the commissioners according to the like rules as the witnesses for the prosecution.

17. Omitted.

18. The commissioners or some person appointed by them shall take notes in English or Vernacular of all the oral evidence, which shall be read aloud to each witness by whom the same was given, and if necessary, explained to him in the language in which it was given, and shall be recorded with the proceedings.

19. If the person accused makes only an oral defence, and exhibits no evidence, the inquiry shall end with his defence; if he records a written defence, or exhibits evidence, the prosecutor shall be entitled to a general oral reply on the whole case, and may also exhibit evidence to contradict any evidence exhibited for the defence, in which case the person accused shall not be entitled to any adjournment of the proceedings, although such new evidence were not included in the list furnished to him.

20. When the commissioners shall be of opinion that the articles of charge, or any of them, are not drawn with sufficient clearness and precision, the commissioners may, in their discretion require the same to be amended, and may thereupon, on the application of the person accused, adjourn the inquiry for a reasonable time. The commissioners may also, if they think fit, adjourn the inquiry from time to time, on the application of either the prosecutor or the person accused, on the ground of sickness or unavoidable absence of any witness or other reasonable cause. When such application is made and refused, the commissioners shall record the application, and their reasons for refusing to comply with it.

21. After the close of the inquiry the commissioners shall forthwith report to Government their proceedings under the commission, and shall send with the record thereof their opinion upon each of the articles of charge separately, with such observations as they think

fit on the whole case.

22. The Government on consideration of the report of the commissioners, may order them to take further evidence, or give further explanation of their opinions. It may also order additional articles of charge to be framed in which case the inquiry into the truth of such additional articles shall be made in the same manner as is herein directed with respect to the original charges. When special commissioners have been appointed, the Government may also, if it think fit, refer the report of the Commissioners to the Court or other authority to which the person accused is subordinate, for their opinion on the case ; and will finally pass such orders thereon as appear just and consistent with its powers in such cases.

23. The powers of the Government under this Act may in all cases be exercised by His Highness, and when the person accused can be removed from his appointment by a Minister in the State, those powers may also be exercised by that Minister.

24. Nothing in this Act shall be construed to affect the authority of Government for suspending or removing any public servant for any case without any inquiry under this Act.

25. Omitted.

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THE PROBATE AND ADMINISTRATION ACT, 1977.

Act No. XXIX of 1977.

[Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No. 8372, dated 11th September 1920, and State Council Resolution No. 1, dated 8th April, 1925. (Notification No. 4-L/81).]

An Act to provide for the grant of Probates of Wills and Letters of Administration to the estates of certain deceased persons.

Preamble. Whereas it is expedient to provide for the grant of probate of wills and letters of administration to the estates of deceased persons ; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. Omitted.

2. This Act shall apply in the case of every Hindu, Mohammedan and Budhist dying before, on or after the date of commencement of this Act:

Provided that nothing herein contained shall be deemed to render invalid any transfer of property duly made before that date.

3. In this Act unless there be something repugnant in the subject or context—

Interpretation clause

“Province” means the province of Jammu, or the province of Kashmir.

“Province”

“Minor” means any person subject to the Majority Act, who has not attained his majority within the meaning of that Act, and any other

“Minor”.

person who has not completed his age of eighteen years ; and

“minority”

“minority” means the status of any such

person:

“will” means the legal declaration of the intentions of the testator with respect to his property which he desires to be carried into effect after

“Will”.

his death :

“codicil” means an instrument made in relation to a will, explaining, altering or adding to its dispositions. It is considered as forming an additional part of the will;

“codicil”.

“specific legacy”.

“specific legacy” means a legacy of specified property :

“demonstrative legacy”

“demonstrative legacy” means a legacy directed to be paid out of specified property :

“probate”.

“probate” means the copy of a will certified under the seal of a Court of competent jurisdiction, with a grant of administration to the estate of the testator :

“executor”.

“executor” means a person to whom the execution of the last will of a deceased person is, by the testator’s appointment, confided :

“administrator”.

“administrator” means a person appointed by competent authority to administer the estate of a deceased person when there is no executor :

and

“District Judge”.

“District Judge” means the Judge of a principal Civil Court of original jurisdiction.

CHAPTER II.

OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

4. The executor or administrator, as the case may be, of a deceased person is his legal representative for all purposes, and all the property of the deceased person vests in him as such.

Character and property of executor or administrator as such.

But nothing herein contained shall vest in an executor or administrator any property of a deceased person which would otherwise have passed by survivorship to some other person.

5. When a will has been proved and deposited in a Court of competent jurisdiction situated beyond the limits of the State, and properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed.

Administration with copy annexed of authenticated copy of will proved abroad.

6. Probate can be granted only to an executor appointed by the will.

Probate only to appointed executor.

7. The appointment may be express or by necessary implication.
Appointment express or implied.

Illustrations.

(a) A wills that C be his executor if B will not. B is appointed executor by implication.

(b) A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in-law, C, and adds, "but should the within-named C be not living, I do constitute and appoint B my whole and the sole executrix". C is appointed executrix by implication.

(c) A appoints several persons executors of his will and codicils and his nephew residuary legatee, and in another codicil are these words:—"I appoint my nephew my residuary legatee to discharge all lawful demands against my will and codicils, signed of different dates". The nephew is appointed an executor by implication.

8. Probate cannot be granted to any person who is a minor or is of unsound mind.
Persons to whom probate cannot be granted.

9. When several executors are appointed, probate may be granted to them all simultaneously or at different times.
Grant of probate to several executors simultaneously or at different times.

Illustration.

A is an executor of B's will by express appointment, and C an executor of it by implication. Probate may be granted to A and C at the same time, or to A first and then to C, or to C first, then to A.

10. If a codicil be discovered after the grant of probate, a separate probate of that codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the will.
Separate probate of codicil discovered after grant of probate.

If different executors are appointed by the codicil, the probate of the will must be revoked, and a new probate granted of the will and the codicil together.
Procedure when different executors appointed by codicil.

11. When probate has been granted to several executors, and one of them dies, the entire representation of the testator accrues to the surviving executor or executors.
Accrual of representation to surviving executor.

12. Probate of a will when granted establishes the will from the death of the testator, and renders valid all intermediate acts of the executor as such.
Effect of probate.

13. Letters of administration cannot be granted to any person who is a minor or is of unsound mind.
To whom administration may not be granted.

14. Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.

Effect of letters of administration.

15. Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate.

Acts not validated by administration.

16. When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued calling upon the executor to accept or renounce his executorship ;

Grant of administration where executor has not renounced.

except that, when one or more of several executors has or have proved a will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

Exception.

17. The renunciation may be made orally in the presence of the Judge, or by a writing signed by the person renouncing, and when made shall preclude him from ever thereafter applying for probate of the will appointing him executor.

Form and effect of renunciation of executorship.

18. If the executor renounce, or fail to accept, the executorship within the time limited for the acceptance or refusal thereof, the will may be proved and letters of administration with a copy of the will annexed may be granted to the person who would be entitled to administration in case of intestacy.

Procedure where executor renounces or fails to accept within time limited.

19. When the deceased has made a will, but has not appointed an executor, or

Grant of administration to universal or residuary legatee.

when he has appointed an executor who is legally incapable or refuses to act, or has died before the testator, or before he has proved the will, or

when the executor dies after having proved the will, but before he has administered all the estate of the deceased,

an universal or residuary legatee may be admitted to prove the will and letters of administration with the will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

20. When a residuary legatee who has a beneficial interest survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration with the will annexed as such residuary legatee.

Right to administration of representative of deceased residuary legatee.

21. When there is no executor and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the will, and letters of administration may be granted to him or them accordingly.

Grant of administration where no executor, nor residuary legatee, nor representative of such legatee.

22. Letters of administration with the will annexed shall not be granted to any legatee other than an universal or a residuary legatee, until a citation has been issued and published in the manner hereinafter mentioned, calling on the next-of-kin to accept or refuse letters of administration.

Citation before grant of administration to legatee other than universal or residuary.

23. When the deceased has died intestate, administration of his estate may be granted to any person who according to the rules for the distribution of the estate of an intestate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.

To whom administration may be granted.

When several such persons apply for administration, it shall be in the discretion of the Court to grant it to any one or more of them.

When no such person applies, it may be granted to a creditor of the deceased.

CHAPTER III.

OF LIMITED GRANTS.

(a).—*Grants limited in Duration.*

24. When the will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident and not by any act of the testator, and a copy or the draft of the will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it be produced.

Probate of copy or draft of lost will.

25. When the will has been lost or destroyed, and no copy has been made nor the draft preserved, probate may be granted of its contents, if they can be established by evidence.

26. When the will is in the possession of a person, residing out of the Province in which application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original, probate may be granted of the copy so transmitted, limited until the will or an authenticated copy of it be produced.

27. Where no will of the deceased is forthcoming, but there is reason to believe that there is a will in existence, letters of administration may be granted, limited until the will or an authenticated copy of it be produced.

(b).—Grants for the Use and Benefit of others having Right.

28. When any executor is absent from the Province in which the application is made, and there is no executor within the Province willing to act, letters of administration with the will annexed may be granted to the agent of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.

29. When any person to whom, if present, letters of administration with the will annexed might be granted, is absent from the Province, letters of administration with the will annexed may be granted to his agent, limited as above mentioned.

30. When a person entitled to administration in case of intestacy is absent from the Province, and no person equally entitled is willing to act, letters of administration may be granted to the agent of the absent person, limited as before-mentioned.

31. When a minor is sole executor or sole residuary legatee, letters of administration with the will annexed may be granted to the legal guardian of such minor, or to such other

person as the Court shall think fit, until the minor has attained his majority, at which period, and not before, probate of the will shall be granted to him.

32. When there are two or more minor executors and no executor who has attained majority, or two or more residuary legatees and no residuary legatee who has attained majority, the grant shall be limited until one of them has attained his majority.

Administration during minority of several executors or residuary legatees.

33. If a sole executor or a sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate according to the rule for the distribution of intestates' estate applicable in the case of the deceased, be a minor or lunatic, letters of administration with or without the will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or, if there be no such person, to such other person as the Court thinks fit to appoint, for the use and benefit of the minor or lunatic, until he attains majority or becomes of sound mind, as the case may be.

Administration for use and benefit of lunatic.

34. Pending any suit touching the validity of the will of a deceased person, or for obtaining or revoking any probate or any grant of letters of administration, the Court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator other than the right of distributing such estate, and every such administrator shall be subject to the immediate control of the Court and shall act under its direction.

Administration pendant-life.

(c).-For special Purposes.

35. If an executor be appointed for any limited purpose specified in the will, the probate shall be limited to that purpose, and, if he should appoint an agent to take administration on his behalf, the letters of administration with the will annexed shall accordingly be limited.

Probate limited to purpose specified in will.

36. If an executor appointed generally give an authority to an attorney to prove a will on his behalf, and the authority is limited to a particular purpose, the letters of administration with the will annexed shall be limited accordingly.

Administration with will annexed limited to particular purpose.

37. Where a person dies, leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the beneficiary, or to some other person on his behalf.

38. When it is necessary that the representative of a person deceased be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other suit which may be commenced in the same or in any other Court between the parties, or any other parties touching the matters at issue in the said suit and until a final decree shall be made therein and carried into complete execution.

39. If, at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator to whom the same has or have been granted is absent from the Province within which the Court that has granted the probate or letters of administration is situate, such Court may grant to any person whom it thinks fit letters of administration limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.

40. In any case in which it appears necessary for preserving the property of a deceased person the Court within whose district any of the property is situate may grant, to any person whom such Court thinks fit, letters of administration limited to the collection, and preservation of the property of the deceased, and giving discharges for debts due to his estate, subject to the directions of the Court.

41. When a person has died intestate, or leaving a will of which there is no executor willing and competent to act, or where the executor is, at the time of the death of such person, resident out of the Province, and it appears to the Court to be necessary or convenient to appoint some person to administer the estate, or any part thereof other than the person who under ordinary circumstances would be entitled to a grant of administration, the Judge may

in his discretion having regard to consanguinity, amount of interest, the safety of the estate and probability that it will be properly administered, appoint such person as he thinks fit to be administrator ;

and in every such case letters of administration may be limited or not as the Judge thinks fit.

(d).—Grants with Exception.

42. Whenever the nature of the case requires that an exception be made, probate of a will or letters of administration with the will annexed shall be granted subject to such exception.

Probate or administration with will annexed subject to exception.

43. Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to such exception.

Administration with exception.

(e).—Grants of the rest.

44. Whenever a grant with exception of probate, or letters of administration with or without the will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

Probate or administration of rest.

(f).—Grants of Effects unadministered.

45. If the executor to whom probate has been granted has died leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.

Grant of effects unadministered.

46. In granting letters of administration of an estate not fully administered, the Court shall be guided by the same rules as apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made.

Rules as to grants of effects unadministered.

47. When a limited grant has expired by effluxion of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration

Administration when limited grant expired, and still some part of estate unadministered.

shall be granted to those persons to whom original grants might have been made.

CHAPTER IV.

ALTERATION AND REVOCATION OF GRANTS.

48. Errors in names and descriptions, or in setting forth the time and place of the deceased's death or the purpose in a limited grant, may be rectified by the Court, and the grant of probate or letters of administration may be altered and amended accordingly.

49. If, after the grant of letters of administration with the will annexed, a codicil be discovered, it may be added to the grant on due proof and identification, and the grant, altered and amended accordingly.

50. The grant of probate or letters of administration may be revoked or annulled for just cause.

EXPLANATION.—“Just cause” is—

“Just cause.”

1st, that the proceedings to obtain the grant were defective in substance ;

2nd, that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case ;

3rd, that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently ;

4th, that the grant has become useless and inoperative through circumstances ;

5th, that the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this Act or has exhibited under that Chapter an inventory or account which is untrue in a material respect.

Illustrations.

(a) The Court by which the grant was made had no jurisdiction.

(b) The grant was made without citing parties who ought to have been cited.

- (c) The will of which probate was obtained was forged or revoked.
 (d) A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.
 (e) A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.
 (f) Since probate was granted, a later will has been discovered.
 (g) Since probate was granted, a codicil has been discovered which revokes or adds to the appointment of executors under the will.
 (h) The person to whom probate was, or letters of administration were, granted, has subsequently become of unsound mind.

CHAPTER V.

OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION.

51. The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district.

Jurisdiction of District Judge in granting and revoking probates, etc.

52. The High Court may, from time to time, appoint such judicial officers within any district as it thinks fit to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may from time to time prescribe :

Power to appoint Delegate of District Judge to deal with non-contentious cases.

Provided that, such appointment be made with the previous sanction of ¹[the Government].

Persons so appointed shall be called "District Delegates."

53. The District Judge shall have the like powers and authority in relation to the granting of probate and letters of administration, and all matters connected therewith, as are by law vested in him in relation to any civil suit or proceeding depending in his Court.

District Judge's powers as to grant of probate and administration.

54. The District Judge may order any person to produce and bring into Court any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person ;

District Judge may order person to produce testamentary.

and if it be not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the Court may direct him to attend for the purpose of being examined respecting the same.

and he shall be bound to answer such questions as may

¹Substituted for "His Highness" vide Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

be put to him by the Court, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the 'Ranbir Dand Bidhi, in case of default in not attending or in not answering such questions or not bringing in such paper or writing, as he would have been subject to in case he had been a party to a suit, and had made such default,

and the costs of the proceeding shall be in the descretion of the Judge.

55. The proceedings of the Court of the District Judge, in relation to the granting of probate and letters of administration, shall except as hereinafter otherwise provided, be regulated, so far as the circumstances of the case will admit, by the Code of Civil Procedure

Proceedings of District Judge's Court in relation to probate and administration.

56. Probate of the will or letters of administration to the estate of a deceased person may be granted by the District Judge under the seal of his Court, if it appears by a petition, verified as hereinafter mentioned, of the person applying for the same that the testator or intestate, as the case may be, had at the time of his decease a fixed place of abode, or any property, moveable or immoveable, within the jurisdiction of the Judge.

When probate or administration may be granted by District Judge.

57. When the application is made to the Judge of a district in which the deceased had no fixed abode at the time of his death, the Judge may in his discretion refuse the application, if in his judgment it could be disposed of more justly or conveniently in another district, or, where the application is for letters of administration, grant them absolutely, or limited to the property within his own jurisdiction.

Disposal of application made to Judge of district in which deceased had no fixed abode.

58. Probate and letters of administration, may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death had his fixed place of abode within the jurisdiction of such Delegate.

Probate and letters of administration may be granted by Delegate.

59. Probate or letters of administration shall have effect over all the property, moveable or immoveable, of the deceased throughout the Province in which the same is granted,

Conclusiveness of probate or letters of administration.

and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him,

and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property to the person to whom such probate or letters of administration shall have been granted:

Provided that probates and letters of administration granted—

Effect of unlimited probates, etc., granted by certain Courts.

(a) by the High Court, or

(b) by a District Judge, where the deceased at the time of his death had his fixed place of abode situate within the jurisdiction of such Judge, and such Judge certifies that the value of the property affected beyond the limits of the province does not exceed six thousand rupees,

shall, unless otherwise directed by the grant, have like effect throughout the whole of the State.

60. (1) Where probate or letters of administration has or have been granted by the District Judge with the effect referred to in the proviso to section 59, the District Judge, shall send a certificate thereof to the High Court.

(2) Every certificate referred to in sub-section (1) shall be to the following effect, namely—

“I. A. B. District Judge of.....hereby certify that on the..... day of..... granted probate of the will (or letters of administration of the estate) of C. D. late of.....deceased to E. F. of..... and G. H. of..... and that such probate (or letters) has (or have) effect over all the property of the deceased throughout the whole of the State;”

and such certificate shall be filed by the High Court.

Where any portion of the assets has been stated by the petitioner, as hereinafter provided in section 62 and 64 to be situate within the jurisdiction of a District Judge in another Province the Court required to send the certificate referred in sub-section (1) shall send a copy thereof to such District Judge and such copy shall be filed by the District Judge receiving the same.

61. The application for probate or letters of administration, if made and verified in the manner hereinafter mentioned, shall be conclusive for the purpose of authorising the grant of probate or administration, and no such grant shall

Conclusiveness of application for probate or administration, if properly made and verified.

be impeached by reason that the testator or intestate had no fixed place of abode, or no property within the district at the time of his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the Court.

62. Application for probate or for letters of administration with the will annexed shall be made by a petition distinctly written in the language in ordinary use in proceedings before the Court in which the application is made, with the will, or, in the cases mentioned in sections 24, 25 and 26, a copy, draft or statement of the contents thereof, annexed, and stating,

Petition for probate. the time of the testator's death,
that the writing annexed is his last will and testament, or as the case may be,

that it was duly executed,
the amount of assets which are likely to come to the petitioner's hands ;

and, where the application is for probate, that the petitioner is the executor named in the will.

In addition to these particulars, the petition shall further state,

when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode or had some property situate within the jurisdiction of the Judge ;
and,

when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

When the application is to the District Judge and any portion of the assets likely to come to the petitioner's hands is situate in another Province, the petition shall further state the amount of such assets in each Province and the District Judges within whose jurisdiction such assets are situate.

63. In cases wherein the will, copy or draft is written in any language other than that in ordinary use in proceedings before the Court, there shall be a translation thereof annexed to the petition by a translator of the Court, if the language be one for which a translator is appointed ; or, if the will, copy or draft be in any other language, then by any person competent to translate the same, in which case such translation shall be verified by that person in the following manner :—

In what cases translation of will to be annexed to petition.
Verification of translation by person other than Court translator.
"I (A. B.) do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof."

64. Application for letters of administration shall be made by petition distinctly written as aforesaid, and stating,
Patition for letters of administration.
 the time and place of the deceased's death,
 the family or other relatives of the deceased and their respective residences,
 the right in which the petitioner claims,
 the amount of assets which are likely to come to the petitioner's hands.

In addition to these particulars, the petition shall further state,

when the application is to a District Judge, that the deceased at the time of his death had a fixed place of abode or had some property situate within the jurisdiction of the Judge ; and

when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

When the application is to the District Judge and any portion of the assets likely to come to the petitioner's hands is situate in another Province, the petition shall further state the amount of such assets in each Province and the District Judges within whose jurisdiction such assets are situate.

65. Every person applying to any of the Courts mentioned in the proviso to section 59 for probate of a will or letters of administration of an estate, intended to have effect throughout the State shall state in his petition, in addition to the matters respectively required by sections 62 and 64, that to the best of his belief no application has been made to any other Court for a probate of the same will or for letters of administration of the same estate, intended to have such effect as last aforesaid;

or, where any such application has been made, the Court to which it was made, the person or persons by whom it was made, and the proceedings (if any) had thereon.

And the Court to which any application is made under the proviso to section 59 may, if it think fit, reject the same.

66. The petition for probate or letters of administration shall in all cases be subscribed by the petitioner and his pleader, if any, and shall be verified by the petitioner in the following manner or to the like effect :—

Petition for probate or administration to be signed and verified.

"I (A. B.), the petitioner in the above petition, declare that what is stated therein is true to the best of my information and belief."

67. Where the application is for probate, or for letters of administration with the will annexed, the petition shall also be verified by at least one of the witnesses to the will (when procurable), in the manner or to the effect following :—

Verification of petition for probate by one witness to will.

“I (C. D.), one of the witnesses to the last will and testament of the testator mentioned in the above petition, declare that I was present and saw the said testator affix his signature (*or* mark) thereto (*as the case may be*) (*or* that the said testator acknowledged the writing annexed to the above petition to be his last will and testament in my presence).”

68. If any petition or declaration which is hereby required to be verified contains any averment which the person making the verification knows or believes to be false, such person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

Punishment for false averment to petition or declaration.

69. In all cases it shall be lawful for the District Judge or District Delegate, if he thinks fit,

District Judge may examine petitioner in person,

to examine the petitioner in person upon oath, and also to require further evidence of the due execution of the will, or the right of the petitioner to the letters of administration, as the case may be, and

require further evidence

to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

and issue citations to inspect proceedings.

The citation shall be fixed up in some conspicuous part of the court-house, and also in the office of the Collector of the district, and otherwise published or made known in such manner as the Judge or Delegate issuing the same may direct.

Publication of citation.

Where any portion of the assets has been stated by the petitioner to be situate within the jurisdiction of a District Judge in another Province, the District Judge issuing the same shall cause a copy of the citation to be sent to such other District Judge, who shall publish the same in the same manner as if it were a citation issued by himself, and shall certify such publication to the District Judge who issued the citation.

70. Caveats against the grant of probate or letters of administration may be lodged with the District Judge or a District Delegate;

Caveats against grant of probate or administration.

and, immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge ;

and, immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased had his fixed place of abode at the time of his death and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same.

71. The caveat shall be to the following effect :—

“Let nothing be done in the matter of the estate of *A. B.* late of _____, deceased, who died on the _____ day of _____ at _____, without notice to *C. D.* of _____.”

72. No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge or District Delegate, to whom the application has been made or notice thereof has been given of its entry with some other Delegate, until after such notice to the person by whom the same has been entered as the Court shall think reasonable.

73. A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

EXPLANATION.—By “contention” is understood the appearance of any one in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

74. In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, or any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

Form of caveat.

ing effect :—

After entry of caveat, no proceeding taken on petition until after notice to caveator.

District Delegate when not to grant probate or administration,

Power to transmit statement to District Judge in doubtful cases where no contention.

75. In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition with any documents that may have been filed therewith, shall be returned to the persons by whom the application was made, in order that the same may be presented to the District Judge;

Procedure where there is contention or District Delegate thinks probate or letters of administration should be refused in his Court.

unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorised to do, and in that case the same shall be sent by him to the District Judge.

76. Whenever it appears to the Judge or District Delegate that probate of a will should be granted, he shall grant the same under the seal of his Court in manner following:—

"I, _____, Judge of the district of _____, [or Delegate appointed for granting probate or letters of administration in (*here insert the limits of the delegate's jurisdiction*)] hereby make known that on the day of _____ in the year the last will of _____, late of _____, a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will, was granted to _____, the executor in the said will named, he having undertaken to administer the same and to make a full and true inventory of the said property and credits and exhibit the same in this Court within six months from the date of this grant or within such further time as the Court may from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the same date or within such further time as the Court may from time to time appoint.

The _____ day of _____, 19." "

77. Whenever it appears to the District Judge or District Delegate that letters of administration to the estate of a person deceased, with or without a copy of the will annexed, should be granted, he shall grant the same under the seal of his Court in manner following:—

Grant of letters of administration to be under seal of Court.

"I, _____, Judge of the District of _____, [or Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*)] hereby make known that on the _____ day of _____ letters of administration (with

Form of such grant.

or without the will annexed, *as the case may be* of the property and credits of , late of , deceased were granted to , the father (*or as the case may be*) of the deceased, he having undertaken to administer the same, and to a full and true inventory of the said property and credits, and exhibit the same in this Court within six months from the date of this grant or within such further time as the Court may from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the same date or within such further time as the Court may from time to time appoint.

The day of 19 ."

78. Every person to whom any grant of letters of administration is committed, and, if the Judge so direct, any person to whom probate is granted shall give a bond to the Judge of the District Court to enure for the benefit of the Judge for the time being, with one or more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge from time to time by any general or special order directs.

79. The Court may, on application made by petition and on being satisfied that the engagement of any such bond has not been kept,

and upon such terms as to security, or providing that the money received be paid into Court, or otherwise as the Court may think fit,

assign the same to some proper person,

who shall thereupon be entitled to sue on the said bond in his own name as if the same had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach thereof.

80. No probate of a will shall be granted until after the expiration of seven clear days, and no letters of administration shall be granted until after the expiration of fourteen clear days, from the day of the testator or intestate's death.

81. Until a public registry for wills is established, every District Judge and District Delegate shall file and preserve among the records of his Court all original wills of which probate or letters of administration with the will annexed may be granted by him ;

Time before which probate or administration shall not be granted.

Filing of original wills of which probate or administration with will annexed granted.

and [the Government] shall make regulations for the preservation and inspection of the wills so filed as aforesaid.

82. After any grant of probate or letters of administration, no other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, until such probate or letters of administration shall have been recalled or revoked.

83. In any case before the District Judge in which there is contention, the proceedings shall take, as nearly as may be, the form of a suit, according to the provisions of the Code of Civil Procedure, in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant.

84. Where any probate is, or letters of administration are, revoked, all payments *bona fide* made to any executor or administrator under such probate or administration before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same ;

and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself out of the assests of the deceased in respect of any payments made by him which the person to whom probate or letters of administration shall be afterwards granted, might have lawfully made.

85. Notwithstanding anything hereinbefore contained, it shall, be in the discretion of the Court to make an order refusing, for reasons to be recorded by it in writing, to grant any application for letters of administration made under this Act.

86. Every order made by a District Judge or District Delegate by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court under the rules contained in the Code of Civil Procedure applicable to appeals.

87. The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the

District Judge.

87-A. The High Court may, on application made to it, suspend, remove or discharge any private executor or administrator, and provide for the succession of another person to the office of any such executor or administrator who may cease to hold office, and the vesting in such successor of any property belonging to the estate.

87-B. Where probate or letters of administration in respect of any estate have been granted under this Act, the High Court may, on application made to it, give to the executor or administrator any general or special directions in regard to the estate or in regard to the administration thereof.

CHAPTER VI.

OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR.

88. An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and may exercise the same powers for the recovery of debts due to him at the time of his death, as the deceased had when living.

89. All demands whatsoever, and all rights to prosecute or defend any suit or other proceeding, existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators, except causes of action for defamation, assault as defined in the 'Ranbir Dand Bidhi or other personal injuries not causing the death of the party, and except also cases where, after the death of the party, the relief sought could not be enjoyed, or granting it would be nugatory.

Illustration.

A collision takes place on a railway in consequence of some neglect or default of the officials, and a passenger is severely hurt but not so as to cause death. He afterwards dies without having instituted any suit. The cause of action does not survive.

90. (1) An executor or administrator has, subject to the provisions of this section, power to dispose, as he thinks fit, of all or any of the property for the time being vested in him under section 4.

(2) The power of an executor to dispose of immoveable property so vested in him is subject to any restriction which may be imposed in this behalf by the will appointing him, unless probate has been granted to him and the Court which granted the probate permits him by an order in writing, notwithstanding the restriction, to dispose of any immoveable property specified in the order in a manner permitted by the order.

(3) An administrator may not, without the previous permission of the Court by which the letters of administration were granted:—

(a) mortgage, charge or transfer by sale, gift, exchange or otherwise any immoveable property for the time being vested in him under section 4, or

(b) lease any such property for a term exceeding five years.

(4) A disposal of property by an executor or administrator in contravention of sub-section (2) or sub-section (3), as the case may be, is voidable at the instance of any other person interested in the property.

(5) Before any probate or letters of administration is or are granted under this Act there shall be endorsed thereon or annexed thereto a copy of sub-sections (1), (2) and (4), or of sub-sections (1), (3) and (4), as the case may be.

(6) A probate or letters of administration shall not be rendered invalid by reasons of the endorsement or annexure required by the last foregoing sub-section not having been made thereon or attached thereto, nor shall the absence of such an endorsement or annexure authorise an executor or administrator to act otherwise than in accordance with the provisions of this section.

90-A. An executor or administrator may in addition to, General powers of administration, and not in derogation of, any other powers of expenditure lawfully exerciseable by him, incur expenditure:—

(a) on such acts as may be necessary for the proper care and management of any property belonging to any estate administered by him; and,

(b) with the sanction of the High Court, on such religious charitable and other objects, and on such improvements, as may be reasonable and proper in the case of such property.

91. If an executor or administrator purchases, either Purchase by executor or administrator of deceased's property. directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

92. When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary in the will or grant of letters of administration, be exercised by any one of them who has proved the will or taken out administration.

Powers of several executors or administrators exercisable by one.

Illustrations.

(a) One of several executors has power to release a debt due to the deceased.

(b) One has power to surrender a lease.

(c) One has power to sell the property of the deceased, moveable or immoveable.

(d) One has power to assent to a legacy.

(e) One has power to endorse a promissory note payable to the deceased.

(f) The will appoints A, B, C and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

93. Upon the death of one or more of several executors or administrators, all the powers of the office become, in the absence of any direction to the contrary in the will or grant of letters of administration, vested in the survivors or survivor.

Survival of powers on death of one to several executors or administrators.

94. The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.

Powers of administrator of effects unadministered.

95. An administrator during minority has all the powers of an ordinary administrator.

Powers of administrator during minority.

96. When probate or letters of administration shall have been granted to a married woman, she has all the powers of an ordinary executor or administrator.

Powers of married executrix or administratrix.

CHAPTER VII.

OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR.

97. It is the duty of an executor to provide funds for the performance of the necessary funeral ceremonies of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose.

As to deceased's funeral ceremonies.

98. (1) An executor or administrator shall, within six months from the grant of probate or letters of administration, or within such further time as the Court which granted the probate or letters may from time to time appoint, exhibit in that Court an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character,

and shall in like manner, within one year from the grant or within such further time as the said Court may from time to time appoint, exhibit an account of the estate, showing the assets which have come to his hands and the manner in which they have been applied or disposed of.

(2) The High Court may from time to time prescribe the form in which an inventory or account under this section is to be exhibited.

(3) If an executor or administrator, on being required by the Court to exhibit an inventory or account under this section, intentionally omits to comply with the requisition, he shall be deemed to have committed an offence under ¹section 136 of the Ranbir Dand Bidhi.

(4) The exhibition of an intentionally false inventory or account under this section shall be deemed to be an offence under ²section 146 of that Code.

99. In all cases where a grant has been made of probate or letters of administration intended to have effect throughout the whole of the State the executor or administrator shall include in the inventory of the effects of the deceased all his moveable or immoveable property situate in the State; and the value of such property situate in each Province shall be separately stated in such inventory;

and the probate or letters of administration shall be chargeable with a fee corresponding to the entire amount or value of the property affected thereby wheresoever situate within the State.

100. The executor or administrator shall collect with reasonable diligence, the property of the deceased and the debts that were due to him at the time of his death.

101. Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and death-bed charges, including

¹Section 176 and 177 of the Ranbir Penal Code.

²Section 193 of the Ranbir Penal Code.

fees for medical attendance, and board and lodging for one month previous to his death, are to be paid before all debts.

102. The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, are to be paid next after the funeral expenses and death-bed charges.

103. Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artisan or domestic servant are next to be paid, and then the other debts of the deceased according to their respective priorities (if any).

Wages for certain services to be next paid, and then other debts.

104. Save as aforesaid, no creditor is to have a right of priority over another.

But the executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably, as far as the assets of the deceased will extend

Debts to be paid before legacies.

105. Debts of every description must be paid before any legacy.

106. If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

Executor or administrator not bound to pay legacies without indemnity.

107. If the assets, after payment of debts, necessary expenses and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions ;

Abatement of general legacies.

and, in the absence of any direction to the contrary in the will, the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself or to any person for whom he is a trustee.

Executor not to pay one legatee in preference to another.

108. Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

Non-abatement of specific legacy when assets sufficient to pay debts.

109. Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses the legatee has a preferential claim for payment of his legacy out of the fund from which the

Right under demonstrative legacy. When assets sufficient to pay debts and necessary expenses.

legacy is directed to be paid until such fund is exhausted, and if, after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assests as for a legacy of the amount of such unpaid remainder.

110. If the assests are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts.

Rateable abatement of specific legacies.

Illustration.

A has bequeathed to B a diamond ring, valued at 500 rupees, and to C a horse, valued at 1,000 rupees. It is found necessary to sell all the effects of the testator, and his assests, after payment of debts, are only 1,000 rupees. Of this sum, rupees 332-5-4 are to be paid to B, and rupees 666-10-8 to C.

111. For the purpose of abatement, a legacy for life, a sum appropriated by the will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it shall be treated as general legacies.

Legacies treated as general for purpose of abatement.

CHAPTER VIII.

OF THE EXECUTOR'S ASSENT TO A LEGACY.

112. The assent of the executor is necessary to complete a legatee's title to his legacy.

Assent necessary to complete legatees' title.

Illustrations

(a) A by his will bequeaths to B his Government paper, which is in deposit with the Bank of Bengal. The Bank has no authority to deliver the securities, nor B a right to take possession of them, without the assent of the executor.

(b) A by his will has bequeathed to C his house in Calcutta in the tanancy of B. C is not entitled to receive the rents without the assent of the executor.

113. The assent of the executor to a specific bequest shall be sufficient to divest his interest as executor therein, and to transfer the subject of the bequest to the legatee unless the nature or the circumstances of the property require that it shall be transferred in a particular way.

Effect of executor's assent to specific legacy.

This assent may be verbal, and it may be either express or implied from the conduct of the executor.

Nature of assent,

Illustrations.

(a) A horse is bequeathed. The executor requests the legatee to dispose of it or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

(b) The interest of a fund is directed by the will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(c) A bequest is made of a fund to A, and after him to B. The executor pays the interest of the fund to A. This is an applied assent to the bequest to B.

(d) Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(e) A person to whom a specific article has been bequeathed takes possession of it, and retains it without any objection on the part of the executor. His assent may be presumed.

114. The assent of an executor to legacy may be conditional, and if the condition be one which he has a right to enforce, and it is not performed, there is no assent.

Conditional assent.

Illustrations.

(a) A bequeaths to B his lands of Sultanpur, which at the date of the will and at the death of A, were subject to a mortgage for 10,000 rupees. The executor assents to the bequest on condition that B shall within a limited time pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(b) The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

115. When the executor is a legatee, his assent to his own legacy is necessary to complete his title to it, in the same way as it is required when the bequest is to another person, and his assent may in like manner be express or implied.

Assent of executor to his own legacy.

Assent shall be implied if in his manner of administering the property he does any act which is referable to his character of legatee and is not referable to his character of executor.

Implied assent.

Illustration.

An executor takes the rent of a house or the interest of Government securities bequeathed to him, and applies it to his own use. This is assent.

116. The assent of the executor to a legacy gives effect to it from the death of the testator.

Effect of executor's assent.

Illustrations.

(a) A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser, and

completes his title to the legacy.

(b) A bequeaths 1,000 rupees to B with interest from his death. The executor does not assent to his legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

117. An executor is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

Executor when to deliver legacies.

Illustration.

A by his will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

CHAPTER IX.

OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES.

118. When an annuity is given by the will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

Commencement of annuity when no time fixed by will.

119. Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month as the case may be after the testator's death, and shall, if the executor think fit, be paid when due, but the executor shall not be bound to pay it till the end of the year.

When annuity, to be paid quarterly or monthly, first falls due.

120. Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorises the first payment to be made ;

Date of successive payments when first payment directed to be made within given time, or on day certain.

and, if the annuitant dies in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

Apportionment where annuitant dies between times of payment.

CHAPTER X.

OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.

121. Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall at the end of the year be invested in such securities as the High Court may, by any general rule to be made from time to time, authorise or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

Investment of sum bequeathed where legacy, not specific, given for life.

122. Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in the last preceding section.

Investment of general legacy, to be paid at future time.

The intermediate interest shall form part of the residue of the testator's estate.

Intermediate interest.

123. Where an annuity is given and no fund is charged with its payment or appropriated by the will to answer it, an annuity of the specified amount shall be purchased, or,

Procedure when no fund charged with or appropriated to, annuity.

if no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the High Court may, by any general rule to be made from time to time, authorise or direct.

124. Where a bequest is contingent, the executor is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee (if any) on his giving sufficient security for the payment of the legacy if it shall become due.

Transfer to residuary legatee of contingent bequest.

125. Where the testator has bequeathed the residue of his estate to a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities.

Investment of residue bequeathed for life, with direction to invest in specified securities.

126. Such conversion and investment as are contemplated by the last preceding section shall be made at such times and in such manner as the executor in his discretion thinks fit;

Time and manner of conversion and investment.

and, until such conversion and investment shall be completed, the person who would be for the time being entitled to the income of the

Interest payable until investment.

fund when so invested shall receive interest at the rate of six per cent. per annum upon the market-value (to be computed as of the date of the testator's death) of such part of the fund as shall not yet have been so invested.

127. Where, by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor, and there is no direction in the will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the Court of the District Judge by whom, or by whose District Delegate, the probate was, or letters of administration with the will annexed were, granted, to the account of the legatee, unless the legatee be a ward of the Court of Wards ;

and, if the legatee be a ward of the Court of Wards, the legacy shall be paid into that Court to his account ;

and such payment into the Court of the District Judge, or into the Court of Wards, as the case may be, shall be a sufficient discharge for the money so paid ;

and such money, when paid in, shall be invested in the purchase of Government securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit as the Judge or the Court of Wards, as the case may be, may direct.

CHAPTER XI.

OF THE PRODUCE AND INTEREST OF LEGACIES.

128. The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

Legatee's title to produce of specific legacy.

EXCEPTION.—A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy. The clear produce of it forms part of the residue of the testator's estate.

Illustrations.

(a) A bequeaths his flock of sheep to B. Between the death of A and delivery by his executor the sheep are shorn, or some of the ewes produce lambs. The wool and lambs are the property of B.

(b) A bequeaths his Government securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the

death of A and the death of C belongs to B, and must, unless he is a minor, be paid to him as it is received.

(c) The testator bequeaths all his four per cent. Government promissory notes to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the notes, but the interest which accrues in respect of them, between the testator's death and A's completing 18, forms part of the residue.

129. The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

Residuary legatee's title to produce of residuary fund.

EXCEPTION.-- A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy. Such income goes as undisposed of.

Illustrations.

(a) The testator bequeaths the residue of his property to A, a minor, to be paid to him when he shall complete the age of 18. The income from the testator's death belongs to A.

(b) The testator bequeaths the residue of his property to A when he shall complete the age of 18. A, if he completes that age, is entitled to receive the residue. The income which has accrued in respect of it since the testator's death goes as undisposed of.

130. Where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death.

Interest when no time fixed for payment of general legacy.

EXCEPTIONS.—(1) Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(2) Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(3) Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

131. Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed. The interest up to such time forms part of the residue of the testator's estate.

Interest when time fixed.

EXCEPTION.—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the will for maintenance, or unless the will contains a direction to the contrary.

Rate of interest.

132. The rate of interest shall be six per cent. per annum.

133. No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the will for making the first payment of the annuity.

134. Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.

CHAPTER XII.

OF THE REFUNDING OF LEGACIES.

135. An executor who has paid a legacy under the order of a Judge is entitled to call upon the legatee to refund in the event of the assets proving insufficient to pay all the legacies.

136. When an executor has voluntarily paid a legacy, he cannot call upon a legatee to refund in the event of the assets proving insufficient to pay all the legacies.

137. When the time prescribed by the will for the performance of a condition has elapsed, without the condition having been performed, and the executor has thereupon, without fraud, distributed the assets, in such case, if further time has, under the second clause of this section, been allowed for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount.

Where the will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person, or the bequest is to cease to have effect, the act must be performed within the time specified, unless the performance of it be prevented by fraud, in which case such further time shall be allowed as is requisite to make up for the delay caused by such fraud.

138. When the executor has paid away the assets in legacies, and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.

When each legatee compellable to refund in proportion.

139. Where an executor or administrator has given such notices as the High Court may, by any general rule to be made from time to time, prescribe, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims be at liberty to distribute the assets, or any part thereof, in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he has not had notice at the time of such distribution ;

Distribution of assets.

but nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively.

Creditor may follow assets.

140. A creditor who has not received payment of his debt may call upon a legatee who has received payment of his legacy to refund whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies, and whether the payment of the legacy by the executor was voluntary or not.

Creditor may call upon legatee to refund.

141. If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund, under the last proceeding section, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

When legatee, not satisfied or compelled to refund under section 140, cannot oblige one paid in full to refund.

142. If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy must, before he can call on a satisfied legatee to refund, first proceed against the executor if he is solvent ; but, if the executor is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

When unsatisfied legatee must first proceed against executor, if solvent.

143. The refunding of one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced if the

Limit to refunding of one legatee to another.

estate has been properly administered.

Illustration.

A has bequeathed 240 rupees to B, 480 rupees to C, and 720 rupees to D. The assets are only 1,200 rupees, and if properly administered would give 200 rupees to B, 400 rupees to C, and 600 rupees to D. C and D have been paid their legacies in full, leaving nothing to B. B, can oblige C to refund 80 rupees, and D to refund 120 rupees.

144. The refunding shall, in all cases, be without interest.

145. The surplus or residue of the deceased's property, after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the will.

145-A. Where a person not having his domicile in the State has died leaving assets both in the State and in the country in which he had his domicile at the time of his death.

and there have been a grant of probate or letters of administration in the State with respect to the assets there and a grant of administration in the country of domicile with respect to the assets in that country,

the executor or administrator, as the case may be, in the State, after having given such notices as are mentioned in section 139 and after having discharged, at the expiration of the time therein named, such lawful claims as he knows of,

may, instead of himself distributing any surplus or residue of the deceased's property to persons residing out of the State who are entitled thereto, transfer, with the consent of the executor or administrator, as the case may be, in the country of domicile, the surplus or residue to him for distribution to those persons.

CHAPTER XIII.

OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION.

146. When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

Illustrations.

(a) The executor pays out of the estate an unfounded claim. He is liable to make good the loss caused by the payment.

(b) The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time. The executor is liable to make good the loss caused by the neglect.

(c) The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

147. When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount.

Liability for neglect to get in any part of property.

Illustrations.

(a) The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount so lost.

(b) The executor neglects to sue for a debt till the debtor is able to plead the Act for the limitation of suits, and the debt is thereby lost to the estate. The executor is liable to make good the amount of the debt.

CHAPTER XIV.

MISCELLANEOUS.

148. In Chapters VIII, IX, X and XII of this Act the provisions as to an executor shall apply also to an administrator with the will annexed.

Provisions applied to administrator with will annexed.

149. Nothing herein contained shall—

Saving clause.

(a) validate any testamentary disposition which would otherwise have been invalid;

(b) invalidate any such disposition which would otherwise have been valid;

(c) deprive any person of any right of maintenance to which he would otherwise have been entitled.

150. No proceedings to obtain probate of a will, or letters of administration to the estate, of any Hindu, Muhammadan or Buddhist shall be instituted in any Court in the State except under this Act.

Probate and administration in case of Hindu or Muhammadan or Buddhist, to be granted only under this Act.

151 to 156. Omitted.

157. (1) When a grant of probate or letters of administration is revoked or annulled under this Act the person to whom the grant was made shall forthwith deliver up the probate or letters to the Court which made the grant.

Surrender of revoked probate or letter of administration.

(2) If such person wilfully and without sufficient cause omits so to deliver up the probate or letters, he shall be punished with fine which may extend to one thousand rupees, or with imprisonment which may extend to three months, or with both.

THE PARTITION ACT, 1977.

Act No. XXX of 1977.

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6. Reserved bidding and bidding by share holders.
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THE PARTITION ACT, 1977**Act No. XXX of 1977.**

[Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No. 8372, dated 11th September, 1920 and State Council Resolution No. 1, dated 8th April 1925. (Notification No. 14-L/81).]

An Act to amend the Law relating to Partition.

WHEREAS it is expedient to amend the law relating to partition ; It is hereby enacted as follows :—

1. Nothing herein contained shall be deemed to affect any local law providing for the partition of immoveable property paying revenue to Government.

Saving.

2. Whenever in any suit for partition in which, if instituted prior to the commencement of this Act a decree for partition might have been made, it appears to the Court that, by reason of the nature of the property to which the suit relates, or of the number of the shareholders therein, or of any other special circumstance, a division of the property cannot reasonably or conveniently be made, and that a sale of the property and distribution of the proceeds would be more beneficial for all the shareholders, the Court may, if it thinks fit, on the request of any of such shareholders interested individually or collectively to the extent of one moiety or upwards, direct a sale of the property and a distribution of the proceeds.

Power of Court to order sale instead of division in partition suits.

3. (1) If, in any case in which the Court is requested under the last foregoing section to direct a sale, any other shareholder applies for leave to buy at a valuation the share or shares of the party or parties asking for a sale, the Court shall order a valuation of the share or shares in such manner as it may think fit and offer to sell the same to such shareholder at the price so ascertained, and may give all necessary and proper directions in that behalf.

Procedure when shareholder undertakes to buy.

(2) If two or more shareholders severally apply for leave to buy as provided in sub-section (1), the Court shall order a sale of the share or shares to the shareholder who offers to pay the highest price above the valuation made by the Court.

(3) If no such shareholder is willing to buy such share or shares at the price so ascertained, the applicant or applicants shall be liable to pay all costs of or incident to the application or applications.

4. (1) Where a share of a dwelling house belonging to an undivided family has been transferred to a person who is not a member of such family and such transferee sues for partition, the Court shall, if any member of the family being a shareholder shall undertake to buy the share of such transferee, make a valuation of such share in such manner as it thinks fit and direct the sale of such share to such shareholder, and may give all necessary and proper directions in that behalf.

Partition suit by transferee of share in dwelling house.

(2) If in any case described in sub-section (1) two or more members of the family being such shareholders severally undertake to buy such share the Court shall follow the procedure prescribed by sub-section (2) of the last foregoing section.

5. In any suit for partition a request for sale may be made or an undertaking, or application for leave, to buy may be given or made on behalf of any party under disability by any person authorised to act on behalf of such party in such suit, but the Court shall not be bound to comply with any such request, undertaking or application unless it is of opinion that the sale or purchase will be for the benefit of the party under such disability.

Representation of parties under disability.

6. (1) Every sale under section 2 shall be subject to a reserved bidding, and the amount of such bidding shall be fixed by the Court in such manner as it may think fit and may be varied from time to time.

Reserved bidding and bidding by shareholders.

(2) On any such sale any of the shareholders shall be at liberty to bid at the sale on such terms as to non-payment of deposit or as to setting off or accounting for the purchase-money or any part thereof instead of paying the same as to the Court may seem reasonable.

(3) If two or more persons, of whom one is a shareholder in the property, respectively advance the same sum at any bidding at such sale, such bidding shall be deemed to be the bidding of the shareholder.

7. Save as hereinbefore provided, when any property is directed to be sold under this Act, the following procedure shall, as far as practicable, be adopted, namely:—

Procedure to be followed in case of sales.

such procedure as the High Court may from time to

time by rules prescribe in this behalf, and until such rules are made the procedure prescribed in the Code of Civil Procedure in respect of sales in execution of decrees.

8. Any order for sale made by the Court under section 2, Orders for sale to be deemed decrees. 3, or 4 shall be deemed to be a decree within the meaning of section 2 of the Code of Civil Procedure.

9. In any suit for partition the Court may, if it shall Saving of power to order partly partition and partly sale. think fit, make a decree for a partition of part of the property to which the suit relates and a sale of the remainder under this Act.

10. This Act shall apply to suits instituted before the Application of Act to pending suits. commencement thereof, in which no scheme for the partition of the property has been finally approved by the Court.

THE PRISONS ACT, 1977.

Act No. XXXI of 1977.

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THE PRISONS ACT, 1977.**Act No. XXXI of 1977.**

[Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No. 8372, dated 11th September, 1910 and State Council Resolution No. 1, dated 8th April 1925. (Notification No. 14-L/81).]

An Act to amend the law relating to Prisons.

WHEREAS it is expedient to amend the law relating to prisons in the State and to provide rules for the regulation of such prisons ; It is hereby enacted as follows:—

CHAPTER I.**PRELIMINARY.**

¹1. Omitted.

²2. Omitted.

Definition.

³3. In this Act—

(1) "Prison" means any jail or place used permanently or temporarily under the general or special orders of ²[the Government] for the detention of prisoners, and includes all lands and buildings appurtenant thereto but does not include—

(a) any place for the confinement of prisoners who are exclusively in the custody of the police;

(b) any place specially appointed by ²[the Government] under section 541 of the Code of Criminal Procedure ; or

(c) any place which has been declared by ²[the Government] by general or special order, to be a subsidiary jail :

(2) "criminal prisoner" means any prisoner duly committed to custody under the writ, warrant or order of any Court or authority exercising criminal jurisdiction, or by order of a Court-martial :

(3) "convicted criminal prisoner" means any criminal prisoner under sentence of a Court or Court-martial, and includes a person detained in prison under the provisions of Chapter VIII of the Code of Criminal Procedure, or under the Prisoners Act.

¹Short title, extent and commencement are given and regulated by Act IV 1977.

²In section 3(1), 5, 6, 7, 11(2) 38, 41, 46, 56, 59, 60 and 62 the words "the Government" substitute for the words "His Highness" vide Act 10 of 1996 published in Government Gazette dated 15th Bhaion 1996.

(4) "civil prisoner" means any prisoner who is not a criminal prisoner:

(5) "remission system" means the rules for the time being in force regulating the award of marks to and the consequent shortening of sentences of, prisoners in jails:

(6) "history-ticket" means the ticket exhibiting such information as is required in respect of each prisoner by this Act or the rules thereunder:

(7) "Inspector General" means ¹[the officer for the time being appointed by the Government as] the Inspector General of Prisons:

(8) "Medical Subordinate" means an Assistant Surgeon, apothecary or qualified Sub-Assistant Surgeon: and

(9) "prohibited article" means an article the introduction or removal of which into or out of a prison is prohibited by any rule under this Act.

CHAPTER II.

MAINTENANCE AND OFFICERS OF PRISONS.

4. The Government shall provide, for the prisoners in ^{Accommodation for prisoners} the State, accommodation in prisons constructed and regulated in such manner as to comply with the requisitions of this Act in respect of the separation of prisoners.

5. The ^{Inspector General} ²[Inspector General] shall exercise, subject to the orders of ³[the Government], the general control and superintendence of all prisons situated in the State.

6. For every prison there shall be a Superintendent, a ^{Officers of prisons} Medical Officer (who may also be the Superintendent), a Medical Subordinate, a Jailor and such other officers as ³[the Government] thinks necessary.

7. Whenever it appears to the ^{Temporary accommodation for prisoners} ⁴[Inspector General] that the number of prisoners in any prison is greater than can conveniently or safely

¹In section 3 (7) words within brackets added vide Act 10 of 1996 published in Government Gazette dated 15th Bhaion 1996.

²Section 5 amended by Notification 29-L/1989 published in Government Gazette dated 10th Bhaion 1989 is further amended by substitution of the word "Inspector General" vide, Act 10 of 1996 for the words "Director of Medical Services."

³See footnote under section 8(1).

⁴Sections 7, 11(1), 14, 16, 31, 56 and 57, the words "Inspector General" substituted for "Minister-in-charge" vide Act X of 1996 published in Government Gazette dated 15th Bhaion 1996.

be kept therein, and it is not convenient to transfer the excess number to some other prison,

or whenever from the outbreak of epidemic disease within any prison, or for any other reason, it is desirable to provide for the temporary shelter and safe custody of any prisoners,

provision shall be made, by such officer and in such manner as ¹[the Government] may direct, for the shelter and safe custody in temporary prisons of so many of the prisoners as cannot be conveniently or safely kept in the prison.

CHAPTER III.

DUTIES OF OFFIERS.

Generally.

8. All officers of a prison shall obey the directions of the Superintendent; all officers subordinate to the Jailor shall perform such duties as may be imposed on them by the Jailor with the sanction of the Superintendent or be prescribed by rules under section 60.

9. No officer of a prison shall sell or let, nor shall any person in trust for or employed by him sell or let, or derive any benefit from selling or letting, any article to any prisoner or have any money or other business dealings directly or indirectly with any prisoner.

10. No officer of a prison shall, nor shall any person in trust for or employed by him, have any interest, direct or indirect, in any contract for the supply of the prison: nor shall he derive any benefit, directly or indirectly, from the sale or purchase of any article on behalf of the prison or belonging to a prisoner.

11. (1) Subject to the orders of the ²[Inspector General] the Superintendent shall manage the prison in all matters relating to discipline, labour, expenditure, punishment and control.

(2) Subject to such general or special directions as may be given by ¹[the Government] the Superintendent of a prison other than a central prison shall obey all orders not inconsistent with this Act or any rule thereunder which may be given respecting the prison by the District Magistrate, and shall report to

¹See footnote under section 3(1).

²See footnote under section 7.

the Minister-in-charge all such orders and the action taken thereon.

12. The Superintendent shall keep, or cause to be kept,

Records to be kept by Superintendent. the following records:—

- (1) a register of prisoners admitted ;
- (2) a book showing when each prisoner is to be released;
- (3) a punishment-book for the entry of the punishments inflicted on prisoners for prison-offences;
- (4) a visitors' book for the entry of any observations made by the visitors touching any matters connected with the administration of the prison ;
- (5) a record of the money and other articles taken from prisoners;

and all such other records as may be prescribed by rules under section 59 or section 60.

Medical Officer.

13. Subject to the control of the Superintendent, the **Duties of Medical Officer.** Medical Officer shall have charge of the sanitary administration of the prison, and shall perform such duties as may be prescribed by rules made by the Government under section 60.

14. Whenever the Medical Officer has reason to believe **Medical Officer to report in certain cases.** that the mind of a prisoner is, or is likely to be, injuriously affected by the discipline or treatment to which he is subjected, the Medical Officer shall report the case in writing to the Superintendent, together with such observations as he may think proper.

This report, with the orders of the Superintendent thereon, shall forthwith be sent to the '[Inspector General] for information.

15. On the death of any prisoner, the Medical Officer **Report on death of prisoners.** shall forthwith record in a register the following particulars, so far as they can be ascertained, namely :—

- (1) the day on which the deceased first complained of illness or was observed to be ill,
- (2) the labour, if any, on which he was engaged on that day,
- (3) the scale of his diet on that day,
- (4) the day on which he was admitted to hospital,
- (5) the day on which the Medical Officer was first informed of the illness,

¹ See footnote under section 7.

(6) the nature of the disease,
 (7) when the deceased was last seen before his death by the Medical Officer or Medical Subordinate,
 (8) when the prisoner died, and
 (9) (in cases where a post-mortem examination is made) an account of the appearances after death,
 together with any special remarks that appear to the Medical Officer to be required.

16. (1) The Jailor shall reside in the prison, unless the Superintendent permits him in writing to reside elsewhere.

(2) The Jailor shall not, without the ¹[Inspector General's] sanction in writing, be concerned in any other employment.

17. Upon the death of a prisoner, the Jailor shall give immediate notice thereof to the Superintendent and the Medical Subordinate.

18. The Jailor shall be responsible for the safe custody of the records to be kept under section 12, for the commitment warrants and all other documents confided to his care, and for the money and other articles taken from prisoners.

19. The Jailor shall not be absent from the prison for a night without permission in writing from the Superintendent; but, if absent without leave for a night from unavoidable necessity, he shall immediately report the fact and the cause of it to the Superintendent.

20. Where a Deputy Jailor or Assistant Jailor is appointed to a prison, he shall, subject to the orders of the Superintendent, be competent to perform any of the duties, and be subject to all the responsibilities, of a Jailor under this Act or any rule thereunder.

Subordinate Officer.

21. The officer acting as gate-keeper, or any other officer of the prison, may examine anything carried in or out of the prison, and may stop and search or cause to be searched any person suspected of bringing any prohibited article into or out of the prison, or of carrying out any property belonging to the prison, and, if any such article or property be found, shall give immediate notice thereof to the Jailor.

¹See footnote under section 7.

22. Officers subordinate to the Jailor shall not be absent from the prison without leave from the Superintendent or from the Jailor.
Subordinate officers not to be sent without leave.

23. Prisoners who have been appointed as officers of prisons shall be deemed to be public servants within the meaning of 'Ranbir Dand Bidhi'.
Convict officers.

CHAPTER IV.

ADMISSION, REMOVAL AND DISCHARGE OF PRISONERS.

24. (1) Whenever a prisoner is admitted into prison, he shall be searched and all weapons and prohibited articles shall be taken from him.
Prisoners to be examined on admission.

(2) Every criminal prisoner shall also, as soon as possible after admission, be examined under the general or special orders of the Medical Officer, who shall enter or cause to be entered in a book, to be kept by the Jailor, a record of the state of the prisoner's health, and of any wounds or marks on his person, the class of labour he is fit for if sentenced to rigorous imprisonment, and any observations which the Medical Officer thinks fit to add.

(3) In the case of female prisoners the search and examination shall be carried out by the matron under the general or special orders of the Medical Officer.

25. All money or other articles in respect whereof no order of a competent Court has been made, and which may with proper authority be brought into the prison by any criminal prisoner or sent to the prison for his use, shall be placed in the custody of the Jailor.
Effects of prisoners.

26. (1) All prisoners, previously to being removed to any other prison, shall be examined by the Medical Officer.
Removal and discharge of prisoners.

(2) No prisoner shall be removed from one prison to another unless the Medical Officer certifies that the prisoner is free from any illness rendering him unfit for removal.

(3) No prisoner shall be discharged against his will from prison, if labouring under any acute or dangerous distemper, nor until, in the opinion of the Medical Officer, such discharge is safe.

CHAPTER V.

DISCIPLINE OF PRISONERS.

27. The requisitions of this Act with respect to the separation of prisoners are as follows:—
 Separation of prisoners.

(1) in a prison containing female as well as male prisoners, the females shall be imprisoned in separate buildings, or separate parts of the same building, in such manner as to prevent their seeing, or conversing or holding any intercourse with, the male prisoners :

(2) in a prison where male prisoners under the age of eighteen are confined, means shall be provided separating them altogether from the other prisoners and for separating those of them who have arrived at the age of puberty from those who have not :

(3) unconvicted criminal prisoners shall be kept apart from convicted criminal prisoners ; and

(4) civil prisoners shall be kept apart from criminal prisoners.

28. Subject to the requirements of the last foregoing section, convicted criminal prisoners may be confined either in association or individually in cells or partly in one way and partly in the other.
 Association and segregation of prisoners.

39. No cell shall be used for solitary confinement unless it is furnished with the means of enabling the prisoner to communicate at any time with an officer of the prison and every prisoner so confined in a cell for more than twenty-four hours, whether as a punishment or otherwise, shall be visited at least once a day by the Medical Officer or Medical Subordinate.
 Solitary confinement.

30. (1) Every prisoner under sentence of death shall, immediately on his arrival in the prison after sentence, be searched by, or by order of, the Jailor and all articles shall be taken from him which the Jailor deems it dangerous or inexpedient to leave in his possession.
 Prisoners under sentence of death.

(2) Every such prisoner shall be confined in a cell apart from all other prisoners, and shall be placed by day and by night under the charge of a guard.

CHAPTER VI.

FOOD, CLOTHING AND BEDDING OF CIVIL AND UNCONVICTED CRIMINAL PRISONERS.

31. A civil prisoner or an unconvicted criminal prisoner shall be permitted to maintain himself, and to purchase, or receive from private sources at proper hours, food, clothing, bedding or other necessities, but subject to examination and to such rules as may be approved by the ¹[Inspector General.]

32. No part of any food, clothing, bedding or other necessities belonging to any civil or unconvicted criminal prisoner shall be given, hired or sold to any other prisoner; and any prisoner transgressing the provisions of this section shall lose the privilege of purchasing food or receiving it from private sources, for such time as the Superintendent thinks proper.

33. (1) Every civil prisoner and unconvicted criminal prisoner unable to provide himself with sufficient clothing and bedding shall be supplied by the Superintendent with such clothing and bedding as may be necessary.

(2) When any civil prisoner has been committed to prison in execution of a decree in favour of a private person, such person, or his representative, shall within, forty-eight hours after the receipt by him of a demand in writing, pay to the Superintendent the cost of the clothing and bedding so supplied to the prisoner; and in default of such payment the prisoner may be released.

CHAPTER VII.

EMPLOYMENT OF PRISONERS.

34. (1) Civil prisoners may, with the Superintendent's permission, work and follow any trade or profession.

(2) Civil prisoners finding their own implements, and not maintained at the expense of the prison, shall be allowed to receive the whole of their earnings; but the earnings of such

¹See footnote under section (7).

as are furnished with implements or are maintained at the expense of the prison shall be subject to a deduction, to be determined by the Superintendent, for the use of implements and the cost of maintenance.

35. (1) No criminal prisoner sentenced to labour or employed on labour at his own desire shall, except on an emergency with the sanction in writing of the Superintendent, be kept to labour for more than nine hours in any one day.

(2) The Medical Officer shall from time to time examine the labouring prisoners while they are employed, and shall at least once in every fortnight cause to be recorded upon the history-ticket of each prisoner employed on labour the weight of such prisoner at the time.

(3) When the Medical Officer is of opinion that the health of any prisoner suffers from employment on any kind or class of labour, such prisoner shall not be employed on that labour but shall be placed on such other kind or class of labour as the Medical Officer may consider suited for him.

36. Provision shall be made by the Superintendent for the employment (as long as they so desire) of all criminal prisoners sentenced to simple imprisonment; but no prisoner not sentenced to rigorous imprisonment shall be punished for neglect of work excepting by such alteration in the scale of diet as may be established by the rules of the prison in the case of neglect of work by such a prisoner.

CHAPTER VIII.

HEALTH OF PRISONERS.

37. (1) The names of prisoners desiring to see the Medical Subordinate or appearing out of health in mind or body shall, without delay, be reported by the officer in immediate charge of such prisoners to the Jailor.

(2) The Jailor shall, without delay, call the attention of the Medical subordinate to any prisoner desiring to see him, or who is ill, or whose state of mind or body appears to require attention, and shall carry into effect all written directions given by the Medical Officer or Medical Subordinate respecting alterations of the discipline or treatment of any such prisoner.

38. All directions given by the Medical Officer or Medical Subordinate in relation to any prisoner, with the exception of orders for the supply of medicines or directions relating to such matters as are carried into effect by the Medical Officer himself or under his superintendence, shall be entered day by day in the prisoner's history-ticket or in such other record as ¹[the Government] may by rule direct, and the Jailor shall make an entry in its proper place stating in respect of each direction the fact of its having been or not having been complied with, accompanied by such observations, if any, as the Jailor thinks fit to make, and the date of the entry.

Record of directions of
Medical Officer.

39. In every prison an hospital or proper place for the reception of sick prisoners shall be provided.

Hospital.

CHAPTER IX.

VISITS TO PRISONERS.

40. Due provision shall be made for the admission, at proper times and under proper restrictions, into every prison of persons with whom civil or unconvicted criminal prisoners may desire to communicate, care being taken that so far as may be consistent with the interests of justice, prisoners under trial may see their duly qualified legal advisers without the presence of any other person.

Visits to civil and unconvicted criminal prisoners.

41. (1) The Jailor may demand the name and address of any visitor to a prisoner, and when the Jailor has any ground for suspicion, may search any visitor, or cause him to be searched, but the search shall not be made in the presence of any prisoner or of another visitor.

Search of visitors.

(2) In case of any such visitor refusing to permit himself to be searched, the Jailor may deny him admission; and the grounds of such proceeding, with the particulars thereof, shall be entered in such record as ¹[the Government] may direct.

¹See footnote under section 3(1).

CHAPTER X

OFFENCES IN RELATION TO PRISONS.

42. Whoever, contrary to any rule under section 60, introduces or removes or attempts by any means whatever to introduce or remove, into or from any prison, or supplies or attempts to supply to any prisoner outside the limits of a prison, any prohibited article, and every officer of a prison who, contrary to any such rule, knowingly suffers any such article to be introduced into or removed from any prison, to be possessed by any prisoner outside the limits of a prison, and whoever, contrary to any such rule, communicates or attempts to communicate with any prisoner, and whoever abets any offence made punishable by this section, shall, on conviction before a Magistrate, be liable to imprisonment for a term not exceeding six months, or to fine not exceeding two hundred rupees, or to both.

43. When any person, in the presence of any officer of a prison, commits any offence specified in the last foregoing section, and refuses on demand of such officer to state his name and residence or gives a name or residence which such officer knows, or has reason to believe, to be false, such officer may arrest him, and shall without unnecessary delay make him over to a Police officer, and thereupon such Police officer shall proceed as if the offence had been committed in his presence.

44. The Superintendent shall cause to be affixed, in a conspicuous place outside the prison, a notice in English and the Vernacular setting forth the acts prohibited under section 42 and the penalties incurred by their commission.

CHAPTER XI.

PRISON OFFENCES.

45. The following acts are declared to be prison-offences when committed by a prisoner:—

(1) such wilful disobedience to any regulation of the prison as shall have been declared by rules made under section 59 to be a prison-offence;

- (2) any assault or use of criminal force;
- (3) the use of insulting or threatening language;
- (4) immoral or indecent or disorderly behaviour;
- (5) wilfully disabling himself from labour;
- (6) contumaciously refusing to work ;
- (7) filing, cutting, altering or removing handcuffs, fetters or bars without due authority;
- (8) wilful idleness or negligence at work by any prisoner sentenced to rigorous imprisonment;
- (9) wilful mismanagement of work by any prisoner sentenced to rigorous imprisonment ;
- (10) wilful damage to prison-property ;
- (11) tampering with or defacing history-tickets, records or documents ;
- (12) receiving, possessing or transferring any prohibited article ;
- (13) feigning illness ;
- (14) wilfully bringing a false accusation against any officer or prisoner ;
- (15) omitting or refusing to report, as soon as it comes to his knowledge, the occurrence of any fire, any plot or conspiracy, any escape, attempt or preparation to escape, and any attack or preparation for attack upon any prisoner or prison-official ; and
- (16) conspiring to escape, or to assist in escaping, or to commit any other of the offences aforesaid.

46. The Superintendent may examine any person touching any such offence, and determine thereupon, and punish such offence by—

(1) a formal warning :—

EXPLANATION.—A formal warning shall mean a warning personally addressed to a prisoner by the Superintendent and recorded in the punishment-book and on the prisoner's history-ticket ;

(2) change of labour to same more irksome or severe form ;

(3) hard labour for a period not exceeding seven days in the case of convicted criminal prisoners not sentenced to rigorous imprisonment ;

(4) such loss of privileges admissible under the remission system for the time being in force as may be prescribed by rule made by ¹[the Government].

(5) the substitution of gunney or other coarse fabric for clothing of other material, not being woollen, for a period which shall not exceed three months ;

¹See footnote under section 3 (1).

(6) imposition of handcuffs of such pattern and weight, in such manner and for such period, as may be prescribed by rules made by ¹[the Government];

(7) imposition of fetters of such pattern and weight, in such manner and for such period, as may be prescribed by rules made by ¹[the Government].

(8) separate confinement for any period not exceeding six months :

EXPLANATION.—Separate confinement means such confinement with or without labour as secludes a prisoner from communication with, but not from sight of, other prisoners, and allows him not less than one hour's exercise per diem and to have his meals in association with one or more other prisoners ;

(9) penal diet,—that is, restriction of diet in such manner and subject to such conditions regarding labour as may be prescribed by ¹[the Government]:

Provided that such restriction of diet shall in no case be applied to a prisoner for more than ninety-six consecutive hours, and shall not be repeated except for a fresh offence nor until after an interval of one week ;

(10) cellular confinement for any period not exceeding fourteen days :

Provided that after each period of cellular confinement an interval of not less duration than such period must elapse before the prisoner is again sentenced to cellular or solitary confinement :

EXPLANATION.—Cellular confinement means such confinement with or without labour as entirely secludes a prisoner from communication with, but not from sight of other prisoners :

(11) solitary confinement for any period not exceeding seven days :

Provided that after each period of solitary confinement an interval of not less duration than such period must elapse before the prisoner is again sentenced to solitary or cellular confinement :

EXPLANATION.—Solitary confinement means such confinement with or without labour as entirely secludes the prisoner both from sight of, and communication with, other prisoners ;

(12) penal diet as defined in clause (9) combined with solitary confinement as defined in clause (11) ;

(13) whipping. provided that the number of stripes shall not exceed thirty :

Provided that nothing in this section shall render any female or civil prisoner liable to the imposition of any form of handcuffs or fetters, or to whipping.

47. Any two of the punishments enumerated in the last foregoing section may be awarded for any such offence in combination, subject to the following exceptions, namely :—

Plural ty of punish-
ments under section 46. (1) formal warning shall not be combined with any other punishment except loss of privileges under clause (4) of that section ;

(2) penal diet shall not be combined with change of labour under clause (2) of that section, nor shall any additional period of penal diet awarded singly be combined with any period of penal diet awarded in combination with solitary confinement ;

(3) solitary confinement shall not be combined with cellular confinement or with separate confinement, nor cellular confinement with separate confinement, so as to prolong the total period of seclusion to which the prisoner shall be liable ;

(4) whipping shall not be combined with any other form of punishment except cellular or separate confinement or loss of privileges admissible under the remission system.

48. (1) The Superintendent shall have power to award any of the punishments enumerated in the two last foregoing sections, subject, in the case of separate confinement for a period exceeding one month, to the previous confirmation of the Minister-in-charge.

(2) No officer subordinate to the Superintendent shall have power to award any punishment whatever.

49. Except by order of a Court of justice, no punishment other than the punishment specified in the foregoing sections shall be inflicted on any prisoner and no punishment shall be inflicted on any prisoner otherwise than in accordance with the provisions of those sections.

50. (1) No punishment of penal diet, either singly or in combination, or of whipping, or of change of labour under section 46, clause (2), shall be executed until the prisoner to whom such punishment has been awarded has been examined by the Medical Officer, who, if he considers the prisoner fit to undergo the punishment, shall certify accordingly in the appropriate column of the punishment-book prescribed in section 12.

(2) If he considers the prisoner unfit to undergo the punishment, he shall in like manner record his opinion in writing and shall state whether the prisoner is absolutely unfit for punishment of the kind awarded, or whether he

considers any modification necessary.

(3) In the latter case he shall state what extent of punishment he thinks the prisoner can undergo without injury to his health.

51. (1) In the punishment-book prescribed in section 12, there shall be recorded, in respect of every punishment inflicted, the prisoner's name, register number and the class (whether habitual or not) to which he belongs, the prison-offence of which he was guilty, the date on which such prison-offence was committed, the number of previous prison-offences recorded against the prisoner, and the date of his last prison-offence, the punishment awarded, and the date of infliction.

(2) In the case of every serious prison-offence, the names of the witness proving the offence shall be recorded, and, in the case of offences for which whipping is awarded, the Superintendent shall record the substance of the evidence of the witnesses, the defence of the prisoner, and the finding with the reasons therefor.

(3) Against the entries relating to each punishment the Jailor and Superintendent shall affix their initials as evidence of the correctness of the entries.

52. If any prisoner is guilty of any offence against prison-discipline which, by reason of his having frequently committed such offences or otherwise, in the opinion of the Superintendent, is not adequately punishable by the infliction of any punishment which he has power under this Act to award, the Superintendent may forward such prisoner to the Court of the District Magistrate or of any Magistrate of the 1st class having jurisdiction, together with a statement of the circumstances and such Magistrate shall thereupon inquire into and try the charge so brought against the prisoner, and upon conviction, may sentence him to imprisonment which may extend to one year, such term to be in addition to any term for which such prisoners was undergoing imprisonment when he committed such offence, or may sentence him to any of the punishments enumerated in section 46:

Provided that any such case may be transferred for inquiry and trial by the District Magistrate to any Magistrate of the first class : and

Provided also that no person shall be punished twice for the same offence.

53. (1) No punishment of whipping shall be inflicted in instalments, or except in the presence of the Superintendent and Medical Officer or

Entries in punishment-books.

Procedure on committal of heinous offence.

Whipping.

Medical Subordinate.

(2) Whipping shall be inflicted with a light ratan not less than half an inch in diameter on the buttocks and in case of prisoners under the age of sixteen it shall be inflicted, in the way of school discipline, with a lighter ratan.

54. (1) Every Jailor or officer of a prison subordinate to him who shall be guilty of any violation of duty or wilful breach or neglect of any rule or regulation or lawful order made by competent authority, or who shall withdraw from the duties of his office without permission, or without having given previous notice in writing of his intention for the period of two months, or who shall wilfully overstay any leave granted to him, or who shall engage without authority in any employment other than his prison duty or who shall be guilty of cowardice, shall be liable, on conviction before a Magistrate, to fine not exceeding two hundred rupees, or to imprisonment for a period not exceeding three months, or to both.

(2) No person shall under this section be punished twice for the same offence.

CHAPTER XII.

MISCELLANEOUS.

55. A prisoner, when being taken to or from any prison in which he may be lawfully confined or otherwise beyond the limits of any such prison in or under the lawful custody or control of a prison officer belonging to such prison shall be deemed to be in prison and shall be subject to all the same incidents as if he were actually in prison.

56. Whenever the Superintendent considers it necessary (with reference either to the state of the prison or the character of the prisoners) for the safe custody of any prisoners that they should be confined in irons, he may, subject to such rules and instructions as may be laid down by the ¹[Inspector General] with the sanction of ²[the Government] so confine them.

57. (1) Prisoners under sentence of transportation may, subject to any rules made under section 60, be confined in fetters for the first three months after admission to prison.

¹See footnote under section 7.

²See footnote under section 3(1).

(2) Should the Superintendent consider it necessary, either for the safe custody of the prisoner himself or for any other reason, that fetters should be retained on any such prisoner for more than three months, he shall apply to the ¹[Inspector General] for sanction to their retention for the period for which he considers their retention necessary, and the ¹[Inspector General] may sanction such retention accordingly.

58. No prisoner shall be put in irons or under mechanical restraint by the Jailor of his own authority, except in case of urgent necessity, in which case notice thereof shall be forthwith given to the Superintendent.

Prisoners not to be iron-
ed by Jailor except under
necessity.

Power to make rules.

59. ²[The Government] may make rules consistent with this Act.

(1) defining the acts which shall constitute prison-offences ;

(2) determining the classification of prison-offences into serious and minor offences ;

(3) fixing the punishments admissible under this Act which shall be awardable for commission of prison-offences or classes thereof ;

(4) declaring the circumstances in which acts constituting both a prison-offence and an offence under the ³Ranbir Dand Bindi may or may not be dealt with as a prison-offence ;

(5) for the award of marks and the shortening of sentences ;

(6) regulating the use of arms against any prisoner or body of prisoners in the case of an outbreak or attempt to escape ;

(7) defining the circumstances and regulating the conditions under which prisoners in danger of death may be released ;

(8) regulating the transfer from one part of the State to another of prisoners whose term of transportation or imprisonment is about to expire ; and,

(9) generally for carrying into effect the purposes of this Act.

60. ²[The Government] may make rules consistent with this Act—

Power of the Government
to make rules.

(a) for the classification of prisons, and description

¹See footnote under section 7.

²See footnote under section 3(1).

³Ranbir Penal Code.

and construction of wards, cells and other places of detention ;

(b) for the regulation by numbers, length or character of sentences, or otherwise, of the prisoners to be confined in each class of prisons ;

(c) for the government of prisons and for the appointment, guidance, control, punishment and dismissal of all officers appointed under this Act ;

(d) as to the food, bedding and clothing of criminal prisoners and of civil prisoners maintained otherwise than at their own costs ;

(e) for the employment, instruction and control of convicts within or without prisons ;

(f) for defining articles the introduction or removal of which into or out of prisons without due authority is prohibited ;

(g) for classifying and prescribing the forms of labour and regulating the periods of rest from labour ;

(h) for regulating the disposal of the proceeds of the employment of prisoner ;

(i) for regulating the confinement in fetters of prisoners sentenced to transportation ;

(j) for the classification and the separation of prisoners ;

(k) for regulating the confinement of convicted criminal prisoners under section 28 ;

(l) for the preparation and maintenance of history-tickets ;

(m) for the selection and appointment of prisoners as officers of prisons ;

(n) for rewards for good conduct ;

(o) for regulating the transfer of prisoners whose term of transportation or imprisonment is about to expire ;

(p) for the treatment, transfer and disposal of criminal lunatics or recovered criminal lunatics confined in prisons ;

(q) for regulating the transmission of appeals and petitions from prisoners and their communications with their friends ;

(r) for the appointment and guidance of visitors of prisons ;

(s) for extending any or all of the provisions of this Act and of the rules thereunder to subsidiary jails or special places of confinement appointed under section 541 of the Code of Criminal Procedure, and to the officers employed, and the prisoners confined, therein ; and,

(t) generally, in regard to the admission, custody employment, dieting, treatment and release of prisoners and for other purposes consistent with this Act.

61. Copies of rules under sections 59 and 60, so far as they affect the government of prisons, shall be exhibited, both in English and in Vernacular, in some place to which all persons employed within a prison have access.

62. All or any of the powers and duties conferred and imposed by this Act on a Superintendent or Medical Officer may in his absence be exercised and performed by such other officer as ¹[the Government] may appoint in this behalf either by name or by his official designation.

THE PETROLEUM ACT, 1977.

Act No. XXXII of 1977.

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THE PETROLEUM ACT, 1977.

Act No. XXXII of 1977.

[Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No. 8372, dated 11th September 1920 and State Council Resolution No. 1, dated 8th April 1925. (Notification No 14-L/81)].

An Act to consolidate and amend the law relating to the importation, possession and transport of petroleum and other substances.

WHEREAS it is expedient to consolidate and amend the law relating to the importation, possession and transport of petroleum and other substances; It is hereby enacted as follows:—

Preliminary.

1. Omitted.

2. In this Act, unless there is anything repugnant in the subject or context—

Definitions.

(a) "Petroleum" includes also—

(i) the liquids commonly known by the names of rock oil, Rangoon oil, Burma oil, paraffin oil, mineral

oil, kerosine, petroline, gasoline, benzoline, benzine, and benzol;

(ii) any inflammable liquid which is made from petroleum, coal, schist, shale, peat or any other bituminous substance, or from any product of petroleum; and

(iii) any liquid, or viscous mixture having in its composition any of the liquids aforesaid;

but it does not include any oil ordinarily used for lubricating purposes and having its flashing point at or above two hundred degrees of Fahrenheit's thermometer;

(b) "dangerous petroleum" means petroleum having its flashing point below seventy-six degrees of Fahrenheit's thermometer:

Provided that, when all or any of the petroleum in the possession of a dealer, is declared by the dealer, to be of one uniform quality, the petroleum shall not be deemed to be dangerous, if the samples selected from the petroleum have their flashing point on an average, at or above seventy-three degrees of Fahrenheit's thermometer, and if no one of these samples has its flashing point below seventy degrees of that thermometer:

(c) to "import" means to bring into the State:

(d) to "transport" means to remove within the State from one place to another:

(e) "prescribed" means prescribed by rules made under this Act; and

(f) "carriage" includes any carriage, waggon, cart, truck, vehicle, or other means of conveying goods or passengers by land in whatever manner the same may be propelled.

3. (1) The "flashing point" of petroleum means the lowest temperature at which the petroleum yields a vapour which will furnish a momentary flash or flame when tested in accordance with the directions in the first schedule with an apparatus which has been stamped and certified as provided by this Act within a period of five years immediately preceding the date on which the apparatus is used for the testing, and after the corrections (if any) which the certificate declares are to be applied to the results of the testing, have been made.

(2) Omitted.

4. (1) His Highness may, by notification in the Jammu and Kashmir Government Gazette, alter or add to the First Schedule by laying down new or varied tests and directions for preparing and using them; and after the issue of any such notification as aforesaid, the reference in section 3, sub-section (1) to the First Schedule

Power to vary tests and prescribe new tests.

shall be construed as reference to the said schedule as so altered or added to for the time being.

(2) His Highness may, in like manner, lay down special tests and issue special instructions in respect of the testing of any substance other than petroleum to which the whole or any portion of this Act may be applied in exercise of the power conferred by section 22, and for which the tests in the First Schedule are unsuitable.

(3) The provisions of section 23 of the General Clauses Act, shall apply to notifications under this section as if they were rules or orders required to be made after previous publication.

Dangerous Petroleum.

5. (1) No quantity of dangerous petroleum exceeding forty gallons shall be imported or transported or kept by any one person or on the same premises, except under, and in accordance with the conditions (if any) of, a licence from the Minister-in-charge of the Customs Department.

(2) Every application for such a licence shall be in writing in the prescribed form, and shall contain the prescribed particulars.

6. No quantity of dangerous petroleum equal to or less than, forty gallons shall be kept or transported without a licence:

Dangerous petroleum in quantities not exceeding forty gallons.

Provided that nothing in this section shall apply in any case where the quantity of the petroleum kept by any one person or on the same premises, or transported, does not exceed three gallons, and the petroleum is placed in separate glass, stoneware or metal vessels, each of which contains not more than a pint and is securely stopped.

Vessels containing dangerous petroleum to be labelled.

7.— Dangerous petroleum—

(a) which is imported and is kept at any place after seven days from the date of its importation, or

(b) which is transported, or

(c) which is sold or exposed for sale,

shall be contained in vessels having attached thereto labels in conspicuous characters stating the description of the petroleum, with the addition of the words "highly inflammable" and with the addition,—

(d) in the case of a vessel kept, of the name and address of the consignee or owner;

(e) in the case of a vessel transported, of the name and address of the sender; and,

(f) in the case of a vessel sold or exposed for sale, of the name and address of the vendor.

Petroleum generally.

8. (1) His Highness may make rules to carry out the purposes and objects of this Act.
Power for His Highness to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for the granting of licences to transport petroleum from any part of the State to any other part of the State in cases in which such licences are by law required.

9. (1) His Highness may make rules to regulate the importation of petroleum and the granting of licences to possess or to transport petroleum within the State in cases in which such licences are by law required.
Power for His Highness to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may:—

(a) Omitted.

(b) provide for ascertaining the quantity and description of any petroleum on any carriage;

(c) determine the places at which, and the conditions on and subject to which, petroleum may be imported, transhipped or stored;

(d) provide for the selection by an officer appointed by His Highness in this behalf, and for the delivery to him, either after or before petroleum has been imported, of samples of all petroleum imported or intended to be imported;

(e) provide, in the case of each consignment which is stated to be of one uniform quality, for the number of samples to be selected, and for the averaging of the results of the testing of those samples;

(f) provide, where the results of the testing of the samples raise a doubt as to the uniformity of the quality of the petroleum in any such consignment, for the division of the consignment into lots, and for the selection and testing of samples of each lot, and for the treatment of the lot in accordance with the results of the testing of those samples;

(g) fix fees for the sampling and testing of petroleum;

(h) fix fees for the storage of petroleum unless any local authority is empowered in that behalf;

(i) define, with respect to any petroleum produced within the State, the limits of the places in which such petroleum is to be refined;

(j) provide for the testing at or near those places of petroleum so produced;

(k) prevent the removal from those limits, otherwise than under the provisions of this Act applicable to dangerous petroleum, of petroleum so produced which has not satisfied the prescribed test;

(l) prescribe the authority by which licences to possess or to transport petroleum may be granted;

(m) fix the fee to be charged for any such licence;

(n) limit the quantity of petroleum to be covered by any such licence;

(o) prescribe the conditions which may be inserted in any such licence;

(p) limit the time during which any such licence is to continue in force;

(q) provide for the renewal of any such licence;

(r) provide for the nature and situation of the premises in respect of which licences to possess petroleum may be granted, the inspection of premises so licensed and the testing of petroleum found thereon;

and

(s) prescribe the manner in which the petroleum covered by a licence to transport is to be packed, the mode and time of its transit, the route by which it is to be taken, and its stoppage and inspection during transit.

10. (1) Petroleum imported in accordance with rules made under section 9, sub-section (2), shall not be removed from the carriages or places in or at which it is loaded or stored until the samples selected therefrom in accordance with those rules have been tested by an officer appointed by His Highness in this behalf and the officer has given a certificate that the petroleum is not dangerous petroleum.

Procedure after petroleum has been discharged or imported.

(2) If the officer, after testing the samples, refuses to give the certificate in respect of any petroleum, His Highness may permit the consignee, within a time to be fixed by His Highness in this behalf,—

(a) to rectify the petroleum,

(b) to apply for a licence to import the petroleum as dangerous petroleum, or

(c) to re-export the petroleum.

(3) If the consignee does not, within the time fixed under sub-section (2), avail himself of the permission granted under

that sub-section, the petroleum may be disposed of as His Highness may direct.

(4) Notwithstanding anything in the foregoing provisions of this section, His Highness; in its discretion, may, where the officer has refused the certificate, direct that the petroleum be re-tested by another officer appointed by him in this behalf, and may, if that officer advises that the petroleum is not dangerous petroleum, authorise its removal from the carriages or places in or at which it is loaded or stored.

11. No quantity of petroleum exceeding five hundred gallons shall be kept by any one person or Possession and transport of petroleum. on the same premises, or shall be transported, except under, and in accordance with the conditions of, a licence granted under this Act:

Provided that His Highness may, by notification in the Jammu and Kashmir Government Gazette, exempt from the operation of this section petroleum when transported in such particular manner and under such particular conditions as may be set forth in the notification.

12. Any officer specially authorised in this behalf by Power to inspect and require dealer to sell samples. His Highness may require any dealer in petroleum to show him any place and any of the vessels in which any petroleum in his possession is stored or contained, to give him such assistance as he may require for examining the same, and to deliver to him samples of the petroleum on payment of the value of the samples.

13. When any such officer has, in exercise of the powers Notice to be given when officer proposes to test samples. conferred by section 12, or by purchase, obtained a sample of petroleum in the possession of a dealer, he may give a notice in writing to the dealer informing him that he is about to test the sample, or cause it to be tested, at a time and place to be fixed in the notice, and that the dealer or his agent may be present at the testing.

14. On any such testing if it appears to the officer or Certificate as to result of testing. other person so testing that the petroleum from which the sample has been taken, is or is not dangerous petroleum, the officer or other person may certify the fact; and the certificate so given shall be receivable as evidence in any proceedings which may be taken under this Act against the dealer in whose possession the petroleum was found, and shall, until the contrary is proved, be proof of the fact stated therein, and a certified copy of the certificate shall be given, free of charge, to the dealer at his request.

Penalties.

Penalty for illegal importation, possession or transport of petroleum or for refusal to comply with section 12.

15. Whoever—

(a) in contravention of this Act or of any of the rules thereunder, imports, possesses or transports any petroleum ; or

(b) otherwise contravenes any such rules as aforesaid ;

OR

(c) breaks any condition contained in a licence granted under this Act ; or

(d) being a dealer in petroleum, refuses or neglects to show to any officer authorised under section 12 any place or any of the vessels in which petroleum in his possession is stored or contained, or to give him such assistance as he may require for examining the same or to give him samples of the petroleum on payment of the value of the samples ; shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

16. Whoever keeps, sells or exposes for sale dangerous petroleum in vessels not labelled as prescribed by section 7 shall be punishable with fine which may extend to five hundred rupees.

17. In any case in which any offence under section 15, clause (a), clause (b) or clause (c), or section 16 has been committed, the convicting Magistrate may direct that—

(a) the petroleum in respect of which the offence has been committed, or

(b) where the offender is importing or transporting, or is in possession of, any petroleum exceeding the quantity (if any) which he is permitted to import, transport or possess, as the case may be, the whole of the petroleum which he is importing transporting or is in possession of, shall, together with the tins or other vessels in which it is contained, be confiscated.

18. The criminal jurisdiction under this Act shall be exercised by a Magistrate of the first class or (where specially empowered by His Highness to try cases under this Act) a Magistrate of the second class.

19. A model of the apparatus for testing petroleum under this Act shall be deposited in the office of the Chemical Examiner at Srinagar or Jammu and be marked with the words "Model test-apparatus."

20. (1) The Chemical Examiner shall, on payment of the prescribed fee (if any), compare with the said model test-apparatus and verify every apparatus for testing petroleum which is submitted to him for the purpose.

(2) If any apparatus for testing petroleum, when compared and verified as provided by sub-section (1), is found correct, or correct subject to certain corrections to be applied to the results of the tests, the Chemical Examiner shall stamp the same with a special number and with the date of the verification, and shall further give a certificate in writing under his hand, in the prescribed form, to the effect that on the date aforesaid the apparatus was compared and verified by him and found to be correct, or correct subject to certain specified corrections to be applied to the results of the tests.

(3) A certificate granted under this section shall, until the contrary is proved, be proof of the matters stated therein.

(4) The Chemical Examiner shall keep a register in the prescribed form, of all certificates granted under this section.

(5) Subject to the payment of the prescribed fees (if any), the said model test-apparatus shall be at all reasonable times open to inspection by any person desiring to inspect it.

Miscellaneous.

21. His Highness may, by notification in the Jammu and Kashmir Government Gazette, exempt from the operation of all or any of the provisions of this Act or of all or any of the rules made under this Act, any petroleum which has its flashing point at or above one hundred and twenty degrees of Fahrenheit's thermometer and is imported in quantity not exceeding that specified in the notification.

22. (1) His Highness may, by notification in the Jammu and Kashmir Government Gazette, apply the whole or any portion of this Act to any substance, other than petroleum, and may by the notification fix, in substitution for the quantities of petroleum fixed by sections 5, 6 and 11, the quantities of the substances to which those sections shall apply.

(2) When the whole or any portion of this Act has been applied as aforesaid to any substance other than petroleum, the provisions, so applied shall be construed with all necessary modifications and shall have effect as if such other substance had been included in the definition of petroleum.

23. His Highness may, by notification in the Jammu and Kashmir Government Gazette, limit, in any manner he deems fit, the operation of any enactment for the time being in force relating to local authorities in any local area or to any particular local authority, and the exercise of any power conferred by any such enactment, in so far as the enactment relates to the possession or transport of petroleum.

Power to limit operation of enactments, relating to possession or transport of petroleum, in municipalities.

24. (1) Every power to make rules conferred by this Act is subject to the condition of the rules being made after previous publication in such manner as His Highness may, by notification in the Jammu and Kashmir Government Gazette, direct.

Previous publication, etc., of rules.

(2) All rules made by His Highness under this Act shall be published in the Jammu and Kashmir Government Gazette, and on such publication shall have effect as if enacted by this Act.

THE FIRST SCHEDULE.

TESTING.

(See section 3.)

I.—Nature of the Test-apparatus.

The apparatus of the following parts:—

- (1) the oil-cup ;
- (2) the cover, with slide, test-lamp, and clockwork arrangement for opening and closing the holes in the cover and for dipping the test-flame ;
- (3) the water-bath or heating vessel ;
- (4) the tripod stand with jacket and spirit-lamp for heating the water-bath ;
- (5) the thermometer for indicating the temperature of the oil in the oil-cup ;
- (6) the thermometer for indicating the temperature of water in the water-bath ;
- (7) the thermometer for indicating the temperature of the oil before it is poured into the oil-cup ;
- (8) the dropping bottle or *pipette* for replenishing the test-lamp ; and
- (9) a barrometer standardised at any place appointed by His Highness.

The oil cup is a cylindrical flat-bottomed vessel made of gun-metal or brass, and tinned or silvered inside. A gauge is fixed to the inside of the cup to regulate the height to which it is to be filled with the sample under examination.

The cup is provided with a close-fitting overlapping cover, which carries the thermometer, the test-lamp and the adjuncts thereto. The test-lamp is suspended upon supports by means of trunnions, which allow it to be easily

inclined to a particular angle and restored to its original position. The socket in the cover, which is to hold a round bulb thermometer for indicating the temperature of the oil during the testing operation, is so adjusted that the bulb of the latter is always inserted in a definite position below the surface of the liquid.

The cover is provided with three holes, one in the centre and two smaller ones close to the sides. These are closed and opened, by means of a pivoted slide. When the slide is moved so as to uncover the holes, the suspended lamp is caught by a projection fixed on the slide, and tilted in such a way as to bring the end or the spout just below the surface of the lid. As the slide moves back so as to cover the holes, the lamp returns to its original position. Upon the cover, in front of and in a line with the nozzle of the lamp, is fixed a white bead, the diameter of which represents the size of the test-flame to be used.

The water-bath or heating vessel is so constructed that, when the oil-cup is placed in position in it, an air-space or air-chamber intervenes between the two consequently, in applying the test under ordinary circumstances, the heat is transmitted gradually to the oil from the hot water through the air-space. The water-bath is fitted with a socket for receiving a long bulb thermometer, to indicate the temperature of the water. It is also provided with a funnel, an overflow-pipe and two handles.

The water-bath rests upon a tripod stand, which is fitted with a copper cylinder or jacket, so that the bath is surrounded by an enclosed air-space which retains and regulates the heat. One of the legs of the stand serves as a support for a spirit-lamp, which is attached to it by a small swing bracket.

The clockwork arrangement, by which during the operation of testing the slide is withdrawn and the test-flame dipped into the cup and raised again as the slide is replaced, is provided with a ratchet key for setting it in action for each test, and with a trigger for starting it each time that the test-flame is applied.

II.—Directions for drawing the sample and preparing it for testing.

1. *Drawing the sample.*—In all cases the testing officer or some person duly authorised by him shall personally superintend the drawing of the sample from an original unopened tin or other vessel.

An opening sufficiently large to admit of the oil being rapidly poured or cyphoned from the tin or other vessel shall be made.

Two bottles, each of the capacity of about forty fluid ounces, are to be filled with the oil. One of these, the contents of which is intended to be preserved for reference in case of need, is to be carefully corked, the cork being well driven home, cut off level with the neck, and melted sealing wax worked into it. The other bottle may be either stoppered or corked.

2. *Preparing the sample for testing.*—About ten fluid ounces of the oil, sufficient for three tests, are transferred from the bottle into which the sample has been drawn to a pint flask or bottle, which is to be immersed in water artificially cooled until a thermometer, introduced into the oil, indicates a temperature not exceeding 50° Fahrenheit.

III.—Directions for preparing and using the Test-apparatus.

1. *Preparing the water-bath.*—The water-bath is filled by pouring water into the funnel until it begins to flow out at the overflow-pipe. The temperature of the water at the commencement of each test as indicated by long bulb thermometer, is to be 130° Fahrenheit, and this is attained in the first instance by mixing hot and cold water either in the bath or in a vessel from which the

bath filled, until the thermometer which is provided for testing the temperature of water gives the proper indication ; or the water is heated by means of the spirit-lamp (which is attached to the stand of the apparatus) until the required temperature is indicated.

2. *Preparing the test-lamp.*—The test-lamp is fitted with a piece of cylindrical wick of such thickness that it fills the wick-holder, but may readily be moved to and fro for the purpose of adjusting the size of the flame. In the body of the lamp, upon the wick, which is coiled within it, is placed a small tuft of cotton wool, moistened with petroleum, any oil not absorbed by the wool being removed. When the lamp has been lighted the wick is adjusted by means of a pair of forceps until the flame is of the size of bead fixed on the cover of the oil-cup ; should a particular test occupy so long a time that the flame begins to get smaller, through the supply of oil in the lamp becoming exhausted, three or four drops of petroleum are allowed to fall upon the tuft of wool in the lamp from the dropping bottle or pipette provided for that purpose. This can be safely done without interrupting the test.

3. *Filling the oil-cup.*—The oil-cup having been previously cooled, by placing it bottom downwards in water at a temperature not exceeding 50° Fahrenheit, is to be rapidly wiped dry, placed on a level surface in a good light, and the oil to be tested is poured in very slowly, without splashing until its surface is level with the point of the gauge which is fixed in the cup. The round bulb thermometer is inserted into the lid of the cup, care being taken that the projecting rim of the collar touches the edge of the socket ; the test-lamp, prepared as already described, is placed in position and the cover is then put on to the cup and pressed down so that its edge rests on the rim of the cup.

4. *Application of the test.*—The water-bath, with its thermometer in position is placed in some locality where it is not exposed to currents of air, and where the light is sufficiently subdued to admit of size of the entire test-flame being compared with that of the bead on the cover. The cup is carefully lifted without shaking it, and placed in the bath, the test lamp is lighted, the clockwork wound up by turning the key. The thermometer in the oil-cup is now watched and when the temperature has reached 56° Fahrenheit the clockwork is set in motion by pressing the trigger.

If no flash takes place, the clockwork is at once rewound and the trigger pressed at 57° Fahrenheit, and soon, at every degree rise of temperatures until the flash occurs, or until a temperature of 95° Fahrenheit has been reached.

If the flash takes place at any temperature below 77° Fahrenheit the temperature at which it occurs is to be recorded. Two fresh portions of the sample are then to be successively tested in a similar manner and the results recorded. If no greater difference than 2° Fahrenheit exists between any two of the three recorded results, and if in no instance the flash has taken place within eight degrees of the temperature at which the testing is commenced, each result is to be corrected for atmospheric pressure as hereafter described, and the average of the three corrected results is the flashing point of the sample. In the event of there being a greater difference than 2° Fahrenheit between any two of the results, while in no instance has the flash taken place within eight degrees of temperature at which the testing was commenced, the series of test is to be rejected, and a fresh series of three similarly obtained, and so on, until a sufficiently concordant series is furnished, when the results are to be corrected and the average taken in the manner already described.

If, however, a flash has occurred at or below 60° when the test is applied in the manner above described, the next testing shall be commenced ten degrees lower than the temperature at which the flash had been previously obtained (that is to say, at 54° or thereunder), and this procedure shall be continued until the result of three consecutive tests do not show a greater

differences than 2° and until a flash has not occurred in any of the three tests within eight degrees of the temperature at which the testing is commenced: Provided always that, if at the commencement of the series of tests a flash has also occurred on the first application of test flame at 56° , and if a flash has also occurred on the first application of the flame in each of three successive tests in which, thereupon, the test-flame is first applied at 46° as above directed, the testing officer shall certify that the petroleum has a flashing point below 47° , and the sample shall be reported dangerous.

If a temperature of 76° Fahrenheit has been reached without a flash occurring the application of the test-flame is to be continued at every degree rise of temperature until a temperature of 95° Fahrenheit has been reached. If no flash has occurred up to this point, and if the petroleum is declared to be imported subject to the provisions of the Act, the tests shall not be continued, and the testing officer shall certify that the petroleum has a flashing point over 95° and is not dangerous. But if the petroleum is oil ordinarily used for lubrication purposes and is declared to have its flashing point at or above 200° or is oil to which a notification of His Highness exempting it from the operation of the Act will be applicable in the event of the flashing point being found to be at or above 120° , the test shall be continued as follows:—The oil-cup is to be removed from the water-bath and the temperature of the water in the water-bath is to be reduced to 95° Fahrenheit by pouring cold water into the funnel (the hot water escaping by the overflow-pipe). The air-chamber is then to be filled to a depth of $1\frac{1}{2}$ inches with water at a temperature of about 95° Fahrenheit, the oil-cup is to be replaced in the water-bath and the spirit-lump attached to the water-bath is to be lighted and placed underneath. The test flame is then to be again applied from 96° Fahrenheit, every degree rise from temperature as indicated by the thermometer in the oil-cup until a flash takes place or until a temperature of 200° Fahrenheit or 120° Fahrenheit, as the case may be, has been reached. If during the operation the test-flame appears to diminish in size, the lamp is to be replenished in the manner prescribed at 2 without interrupting the test.

If a flash occurs at any temperature between 76° and 200° Fahrenheit, the temperature at which it occurs, subject to correction for atmospheric pressure, is the flashing point of the sample.

In repeating a test a fresh sample of oil must always be used, the tested sample being thrown away, and the cup must be wiped dry from any adhering oil and cooled, as already, described, before receiving the fresh sample.

Correction for atmospheric pressure.—As the flashing point of an oil is influenced by changes in atmospheric pressure to an average extent of 1.6° Fahrenheit for every inch of the barometer, a correction of the observed flashing point may become necessary. The height of the barometer must therefore be determined at the time of making the test for the flashing point. The true height of the barometer for the purpose of the test shall be considered to be the height of the column of mercury measured at 32° Fahrenheit, which is supported by the air pressure at the time of the experiment; that is, the actual height of the barometer at the time of observation duly-corrected for any error of the instrument and for its temperature if necessary. For the purpose of applying the correction to the flashing point of the oil obtained by the test, a table is appended to this schedule giving the flashing point of oil ranging from 65° to 80° Fahrenheit under pressure raising from 27 to 31 inch of mercury.

The table is used in the following manner:—

Example.—An oil has given a flashing point of 71° , the barometer being at 28.6 inches; take the nearest number to 71° in the vertical column headed 28.6. This number is 70.8. Substitute for this the number in the same

horizontal line in the column headed 30 (the normal height of the barometer). The substituted number, that is, the true flashing point of the oil, is 73°.

6. Application of the test to viscous fluid or preparations, such as solutions of India-rubber in mineral naphtha, or thick point made with that material.

About a teaspoonful of the substance to be tested is placed in the cup, and the cover fitted with a thermometer is put on.

The cup thus prepared for the test is then cooled down until the thermometer indicates a temperature of 50° F. This may be accomplished either by placing the prepared cup in a refrigerator, or by immersing it up to its projecting collar in water which is maintained at a sufficiently low temperature until the result specified has been obtained.

The prepared cup thus cooled is then transferred to the water-bath, the temperature of which has previously been raised to 76° F. (The scale of the thermometer in the water-bath should range from 60° to 180° F.)

The test is then applied as described in section 4 of this part. If no flash has taken place when the temperature in the cup has reached 75°, the test need not be continued.

The temperature at which the flash occurs is the observed flashing point of the substance and, subject to correction of atmospheric pressure as prescribed in the Act, is the true flashing point.

IV.—Directions for determining the flashing point of petroleum which is not fluid at ordinary temperatures.

1. *Nature of the test-apparatus.*—The instrument employed is the Abel-Pensky petroleum testing apparatus, fitted with an additional thermometer to indicate the temperature of the oil in close proximity to the walls of the cup. This thermometer has a cylindrical bulb, 7/8 inch in length and 3/16 inch in diameter. It is scaled from 45° to 165° Fahrenheit, ten degrees on the scale occupying 3/8 inch. The thermometer is held vertically in a socket attached to the cover of the oil-cup in such a position that the bulb is 1/10 inch from the side of the cup.

(The thermometer can be removed and the orifice which is provided for it closed by means of an india-rubber plug, if the apparatus is required for testing petroleum in the ordinary way.)

2. *Directions for preparing the sample for testing.*—About ten fluid ounces of the oil are placed in a pint-flask, the mouth of which is then closed with an india-rubber stopper and the sample is liquefied by placing the flask in a water-bath, the temperature of which is only raised sufficiently high to liquefy the oil.

3. *Directions for preparing and using the test-apparatus.*—The water-bath and test-lamp are to be prepared in the manner prescribed in Part III of this Schedule. The oil-cup is to be filled with the liquefied oil, and the cover (into which both thermometers are to be previously inserted) placed on it, care being taken that the bulb of the additional thermometer is not brought into contact with the bracket-gauge fixed inside the cup. The oil-cup is then to be placed in a refrigerator, or plunged up to the projecting collar in water maintained at sufficiently low temperature, until both thermometers indicate the temperature at which the testing of petroleum is directed in Part III of this Schedule to be commenced. The oil-cup is then to be removed, wiped dry and placed in the water-bath, and the testing effected in the manner prescribed in Part III of this Schedule, the temperature indicated by the additional (vertical) thermometer alone being noted, and the average of three determinations, duly corrected for atmospheric pressure, being recorded as the flashing point of the sample, provided that no greater difference than 4° Fahrenheit exists between any two of such results.

Table for correction of Flashing Points indicated by the test for Variations in Barometric Pressure on either side of Thirty Inches.

Barometer in inches.

27	27.2	27.4	27.6	27.8	28	28.2	28.4	28.6	28.8	29	29.2	29.4	29.6	29.8	30	30.2	30.4	30.6	30.8	31
Flashing Point in Degrees Fahrenheit.																				
60.2	60.5	60.8	61.2	61.5	61.8	62.1	62.4	62.8	63.1	63.4	63.7	64	64.4	64.7	65	65.3	65.6	66	66.3	66.6
61.2	61.5	61.8	62.2	62.5	62.8	63.1	63.4	63.8	64.1	64.4	64.7	65	65.4	65.7	66	66.3	66.6	67	67.3	67.6
62.2	62.5	62.8	63.2	63.5	63.8	64.1	64.4	64.8	65.1	65.4	65.7	66	66.4	66.7	67	67.3	67.6	68	68.3	68.6
63.2	63.5	63.8	64.2	64.5	64.8	65.1	65.4	65.8	66.1	66.4	66.7	67	67.4	67.7	68	68.3	68.6	69	69.3	69.6
64.2	64.5	64.8	65.2	65.5	65.8	66.1	66.4	66.8	67.1	67.4	67.7	68	68.4	68.7	69	69.3	69.6	70	70.3	70.6
65.2	65.5	65.8	66.2	66.5	66.8	67.1	67.4	67.8	68.1	68.4	68.7	69	69.4	69.7	70	70.3	70.6	71	71.3	71.6
66.2	66.5	66.8	67.2	67.5	67.8	68.1	68.4	68.8	69.1	69.4	69.7	70	70.4	70.7	71	71.3	71.6	72	72.3	72.6
67.2	67.5	67.8	68.2	68.5	68.8	69.1	69.4	69.8	70.1	70.4	70.7	71	71.4	71.7	72	72.3	72.6	73	73.3	73.6
68.2	68.5	68.8	69.2	69.5	69.8	70.1	70.4	70.8	71.1	71.4	71.7	72	72.4	72.7	73	73.3	73.6	74	74.3	74.6
69.2	69.5	69.8	70.2	70.5	70.8	71.1	71.4	71.8	72.1	72.4	72.7	73	73.4	73.7	74	74.3	74.6	75	75.3	75.6
70.2	70.5	70.8	71.2	71.5	71.8	72.1	72.4	72.8	73.1	73.4	73.7	74	74.4	74.7	75	75.3	75.6	76	76.3	76.6
71.2	71.5	71.8	72.2	72.5	72.8	73.1	73.4	73.8	74.1	74.4	74.7	75	75.4	75.7	76	76.3	76.6	77	77.3	77.6
72.2	72.5	72.8	73.2	73.5	73.8	74.1	74.4	74.8	75.1	75.4	75.7	76	76.4	76.7	77	77.3	77.6	78	78.3	78.6
73.2	73.5	73.8	74.2	74.5	74.8	75.1	75.4	75.8	76.1	76.4	76.7	77	77.4	77.7	78	78.3	78.6	79	79.3	79.6
74.2	74.5	74.8	75.2	75.5	75.8	76.1	76.4	76.8	77.1	77.4	77.7	78	78.4	78.7	79	79.3	79.6	80	80.3	80.6
75.2	75.5	75.8	76.2	76.5	76.8	77.1	77.4	77.8	78.1	78.4	78.7	79	79.4	79.7	80	80.3	80.6	81	81.3	81.6

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39. Procedure where removal is desired of person confined more than one hundred miles from place where evidence is required.
40. Omitted.
41. Prisoners to be brought up.
42. Power to Government to exempt certain prisoners from operation of this part.

43. Officer in charge of prison when to abstain from carrying out orders.

Commissions for examination of Prisoners.

44. Commissions for examination of prisoners.
45. Omitted.
46. Commission how to be directed.

Service of Process on Prisoners.

47. Process how served on prisoners.
48. Process served to be transmitted at prisoner's request.

Miscellaneous.

49. Omitted.
50. Deposit of costs.
51. Power to make rules under this part.
52. Power to declare who shall be deemed officer in charge of prison.
53. Omitted.

THE PRISONERS ACT, 1977.**Act No. XXXIII of 1977.**

[Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No. 8372, dated 11th September, 1920 and the State Council Resolution No. 1, dated 8th April, 1925, (Notification No. 14-L/81).]

An Act to consolidate the law relating to Prisoners confined by order of a Court.

WHEREAS it is expedient to consolidate the law relating to prisoners confined by order of a Court; It is hereby enacted as follows :—

PART I.**PRELIMINARY.**

1. Omitted.

2. In this Act unless there is anything repugnant in the subject or context,—

(a) "Court" includes any officer lawfully exercising civil, criminal or revenue jurisdiction; and,—

Definitions.

(b) "prison" includes any place which has been declared by ²[the Government] by general or special order, to be a subsidiary jail.

PART II.**GENERAL.**

3. The officer in charge of a prison shall receive and detain all persons duly committed to his custody, under this Act or otherwise, by any Court, according to the exigency of any writ, warrant or order by which such person has been committed, or until such person is discharged or removed in due course of law.

Officers in charge of prisons to detain persons duly committed to their custody.

¹Short title, extent and commencement are given and regulated by Act IV of 1977.

²In sections 2, 17, 29(1), & (2), 32, 42, 51 and 52 words "the Government" substituted for "His Highness" vide Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

EXPLANATION.—For the purpose of execution, a sentence of “imprisonment” for life shall mean a sentence of imprisonment for 20 years.

4. The officer in charge of a prison shall forthwith after the execution of every such writs, order or warrant, as aforesaid other than a warrant of commitment for trial or after the discharge of the person committed thereby, return such writ, order or warrant to the Court by which the same was issued or made, together with a certificate, endorsed thereon and signed by him, showing how the same has been executed, or why the person committed thereby has been discharged from custody before the execution thereof.

Officers in charge of prisons to return writs, etc., after execution or discharge.

PART III.

5 to 13. Omitted.

PART IV.

PRISONERS.

14. Omitted.

15. Officers in charge of prisons shall give effect to any sentence or order or warrant for the detention of any person passed or issued by any Court or tribunal in the State.

Power for officers in charge of prisons to give effect to sentences of certain Courts.

16. A warrant under the official signature of an officer of such Court or tribunal as is referred to in section 15 shall be sufficient authority for holding any person in confinement, or for sending any person for transportation, in pursuance of the sentence passed upon him.

Warrant of officer of such Court to be sufficient authority.

17. (1) Where an officer in charge of a prison doubts the legality of a warrant or order sent to him for execution under this Part, or the competency of the person whose official seal or signature is affixed thereto to pass the sentence and issue the warrant or order, he shall refer the matter to ¹[the Government] by whose order on the case he and all other public officers shall be guided as to the future disposal

Procedure where officer in charge of prison doubts the legality of warrant sent to him for execution under this part.

¹See footnote under section 2.

of the prisoner.

(2) Pending a reference made under sub-section (1), the prisoner shall be detained in such manner and with such restrictions or mitigations as may be specified in the warrant or order.

18. Omitted.

PART V.

SERVITUDE.

19 to 27. Omitted.

PART VI.

REMOVAL OF PRISONERS.

28. Omitted.

29. (1) ¹[The Government] may, by general or special order, provide for the removal of any prisoner confined in a prison—
Removal of prisoners.
 (a) under sentence of death, or
 (b) under, or in lieu of, a sentence of imprisonment for life, or
 (c) in default of payment of a fine, or
 (d) in default of giving security for keeping the peace or for maintaining good behaviour,
 to any other prison in the State.

(2) ¹[The Government], and (subject to its orders and under its control) the ²[Inspector General] may, in like manner, provide for the removal of any prisoner confined as aforesaid in a prison in the State to any other prison in the State.

30. (1) Where it appears to His Highness that any person Lunatic prisoners how to be dealt with. detained or imprisoned under any order or sentence of any Court is of unsound mind, His Highness may, by a warrant setting forth the grounds of belief that the person is of unsound mind, order his removal to a lunatic asylum or other place of safe custody within the State, there to be kept and treated as His Highness directs during the remainder of the term for which he has been ordered or sentenced to be detained or imprisoned or, if on the expiration of that term it is certified by a medical officer that it is necessary for the safety of the prisoner or others that

¹See footnote under section 2.

²In section 29 (2) words "Inspector General" substituted for "Minister-in-charge" vide Act. X of 1996 published in Government Gazette dated 15th Bhadon 1996.

he should be further detained under medical care or treatment, then until he is discharged according to law.

(2) Where it appears to His Highness that the prisoner has become of sound mind, His Highness shall, by a warrant directed to the person having charge of the prisoner, if still liable to be kept in custody, remand him to the prison from which he was removed, or to another prison within the province, or, if the prisoner is no longer liable to be kept in custody, order him to be discharged.

(3) The provisions of section 31 of Lunacy Act, shall apply to every person confined in a lunatic asylum under sub-section (1) after the expiration of the term for which he was ordered or sentenced to be detained or imprisoned ; and the time during which a prisoner is confined in a lunatic asylum under that sub-section shall be reckoned as part of the term of detention or imprisonment which he may have been ordered or sentenced by the Court to undergo.

31. Omitted.

PART VII.

PERSONS UNDER SENTENCE OF IMPRISONMENT FOR LIFE.

32. ¹[The Government] may appoint places within the State to which persons under sentence of imprisonment for life shall be sent ; and ¹[the Government] or some officer duly authorised in this behalf by ¹[the Government], shall give orders for the removal of such persons to the places so appointed, except when sentence of imprisonment for life is passed on a person already undergoing imprisonment for life under a sentence previously passed for another offence.

Appointment of places for confinement of persons under sentence of imprisonment for life and removal thereto.

PART VIII.

DISCHARGE OF PRISONERS.

33. The High Court may, in any case in which it has recommended to His Highness the granting of a free pardon to any prisoner, permit him to be at liberty on his own recognizance.

Release, on recognizance, by order of High Court, of prisoner recommended for pardon.

¹See footnote under section 2

PART IX.

PROVISION FOR REQUIRING THE ATTENDANCE OF PRISONERS AND OBTAINING THEIR EVIDENCE.

Attendance of Prisoners in Court.

34. Omitted.

35. Subject to the provisions of section 39, any Civil Court may, if it thinks that the evidence of any person confined in any prison within the local limits of its appellate jurisdiction, if it is the High Court, or, if it is not the High Court, then within the local limits of the appellate jurisdiction of the High Court, is material in any matter pending before it, make an order in the form set forth in the first schedule, directed to the officer in charge of the prison.

Power for Civil Courts to require appearance of prisoner to give evidence.

36. (1) Where an order under section 35 is made in any civil matter pending :—

District Judge in certain cases to countersign orders made under section 35.

(a) in a Court subordinate to the District Judge, or
(b) in a Court of Small Causes,

it shall not be forwarded to the officer to whom it is directed, or acted upon by him, until it has been submitted to, and countersigned by,—

(i) the District Judge to which the Court is subordinate, or

(ii) the District Judge within the local limits of whose jurisdiction the Court of Small Causes is situate.

(2) Every order submitted to the District Judge under sub-section (1) shall be accompanied by a statement under the hand of the Judge of the subordinate Court or Court of Small Causes, as the case may be, of the facts which in his opinion render the order necessary, and the District Judge may, after considering such statement, decline to countersign the order.

37. Subject to the provisions of section 39, any Criminal Court may, if it thinks that the evidence of any person confined in any prison within the local limits of its appellate jurisdiction, if it is the High Court, or, if it is not the High Court, then within the local limits of the appellate jurisdiction of the High Court, is material in any matter pending before it, or if a charge of an offence against such person is made or pending, make an order in the form set forth in the first or second schedule, as the case may be, directed to the

Power for certain Criminal Courts to require attendance of prisoner to give evidence or answer to charge.

officer in charge of the prison:

Provided that if such Criminal Court is inferior to the Court of a Magistrate of the first class, the order shall be submitted to, and countersigned by, the District Magistrate to whose Court such Criminal Court is subordinate or within the local limits of whose jurisdiction such Criminal Court is situated.

38. Where any person, for whose attendance an order as in this Part provided is made, is confined in any district other than that in which the Court making or countersigning the order is situate, the order shall be sent by the Court by which it is made or countersigned to the District or Sub-divisional Magistrate within the local limits of whose jurisdiction the person is confined, and that Magistrate shall cause it to be delivered to the officer in charge of the prison in which the person is confined.

Order to be transmitted through Magistrate of the district or sub-division in which person is confined.

39. (1) Where a person is confined in a prison more than one hundred miles distant from the place where any Court, subordinate to the High Court, in which his evidence is required, is held, the Judge or presiding officer of the Court in which the evidence is so required shall, if he thinks that such person should be removed under this Part for the purpose of giving evidence in such Court, apply in writing to the High Court, and the High Court may, if it thinks fit, make an order in the form set forth in the first schedule, directed to the officer in charge of the prison.

(2) The High Court making an order under sub-section (1) shall send it to the District or Sub-divisional Magistrate within the local limits of whose jurisdiction the person named therein is confined, and such Magistrate shall cause it to be delivered to the officer in charge of the prison in which the person is confined.

40. Omitted.

41. Upon delivery of any order under this Part to the officer in charge of the prison in which the person named therein is confined, that officer shall cause him to be taken to the Court in which his attendance is required, so as to be present in the Court at the time in such order mentioned, and shall cause him to be detained in custody in or near the Court until he has been examined or until the Judge or presiding officer of the Court authorises him to be taken back to the prison in which he was confined.

Prisoner to be brought.

42. ¹[The Government] may, by notification in the Government Gazette direct that any person or any class of persons shall not be removed from the prison in which he or they may be confined; and thereupon, and so long as such notification remains in force, the provisions of this Part, other than those contained in sections 44 to 46 shall not apply to such person or class of persons.

43. In any of the following cases, that is to say,—
 Officer in charge of prison when to abstain from carrying out order.

(a) where the person named in any order made under section 35, section 37 or section 39 appears to be, from sickness or other infirmity, unfit to be removed, the officer in charge of the prison in which he is confined, shall apply to the District or Sub-divisional Magistrate within the local limits of whose jurisdiction the prison is situate and if such Magistrate, by writing under his hand, declares himself to be of opinion that the person named in the order is from sickness or other infirmity, unfit to be removed; or

(b) where the person named in any such order is under committal for trial; or

(c) where the person named in any such order is under a remand pending trial or pending a preliminary investigation, or

(d) where the person named in any such order is in custody for a period which would expire before the expiration of the time required for removing him under this Part and for taking him back to the prison in which he is confined; the officer in charge of the prison shall abstain from carrying out the order, and shall send to the Court from which the order has been issued, a statement of the reason for so abstaining:

Provided that such officer as aforesaid shall not so abstain where—

(i) the order has been made under section 37; and

(ii) the person named in the order is confined under committal for trial, or under a remand pending trial or pending a preliminary investigation, and does not appear to be, from sickness or other infirmity, unfit to be removed; and

(iii) the place, where the evidence of the person named in the order is required, is not more than five miles distant from the prison in which he is confined.

¹See footnote under section 2.

Commissions for examination of Prisoners.

Commission for exami-
nation of prisoners.

44. In any of the following cases, that is to say,—

(a) Where it appears to any Civil Court that the evidence of a person confined in any prison, who, for any of the causes mentioned in section 42 or section 43, cannot be removed, is material in any matter pending before it; or

(b) Where it appears to any such Court as aforesaid that the evidence of a person confined in any prison so situate and more than ten miles distant from the place at which such Court is held, is material in any such matter; or

(c) where the District Judge declines, under section 36, to countersign an order for removal;

the Court may, if it thinks fit, issue a commission, under the provisions of the Code of Civil procedure, for the examination of the person in the prison in which he is confined.

45. Omitted.

46. Every commission for the examination of a person Commission how to be directed. issued under section 44 shall be directed to the District Judge within the local limits of whose jurisdiction the prison in which the person is confined is situate, and the District Judge shall commit the execution of the commission to the officer in charge of the prison, or to such other person as he may think fit.

Service of Process on Prisoners.

47. When any process directed to any person confined in any prison is issued from any Criminal or Process how served on prisoners. Revenue Court, it may be served by exhibiting to the officer in charge of the prison the original of the process and depositing with him a copy thereof.

48. (1) Every officer in charge of a prison upon whom service is made under section 47 shall, as Process served to be transmitted at prisoner's request. soon as may be, cause the copy of the process deposited with him to be shown and explained to the person to whom it is directed, and shall thereupon endorse upon the process and sign a certificate to the effect that such person as aforesaid is confined in the prison under his charge and has been shown and had explained to him a copy of the process.

(2) Such certificate as aforesaid shall be *prima facie* evidence of the service of the process, and, if the person to whom the process is directed, requests that the copy shown and explained to him be sent to any other person and provides the

cost of sending it by post, the officer in charge of the prison shall cause it to be so sent.

49. Omitted.

50. No order in any civil matter shall be made by a

Deposit of costs.

Court under any of the provisions of this Part until the amount of the costs and charges of the execution of such order (to be determined by the Court) is deposited in such Court:

Provided that, if upon any application for such order it appears to the Court to which the application is made, that the applicant has not sufficient means to meet the said costs and charges, the Court may pay the same out of any fund applicable to the contingent expenses of such Court, and every sum so expended may be recovered by the Government from any person ordered by the Court to pay the same, as if it were costs in a suit recoverable under the Code of Civil Procedure.

Power to make rules under this Part.

51. (1) ¹[The Government] may make rules—

(a) for regulating the escort of prisoners to and from Courts in which their attendance is required and for their custody during the period of such attendance;

(b) for regulating the amount to be allowed for the costs and charges of such escort; and

(c) for the guidance of officers in all other matters connected with the enforcement of this Part.

(2) All rules made under sub-section (1) shall be published in the Jammu and Kashmir Government Gazette, and shall, from the date of such publication, have the same force as if enacted by this Act.

52. ¹[The Government] may declare what officer shall, for the purposes of this Part, be deemed to be the officer in charge of a prison.

Power to declare who shall be deemed officer in charge of prison.

53. Omitted.

THE FIRST SCHEDULE.

(See sections 35 and 37.)

Court of

To the officer in charge, of the
of prison).

(state name
You are hereby required

¹ See footnote under section 2.

to produce _____, now a prisoner in _____
 under safe and sure conduct before the Court
 of _____ at _____ on the _____
 day of _____ next by _____ of the
 clock in the forenoon of the same day, there to give
 evidence in a matter now pending before the said Court,
 and after the said _____ has then and there given his
 evidence before the said Court or the said Court has
 dispensed with his further attendance, cause him to be
 conveyed under safe and sure conduct back to the prison.
 The _____ day of _____

A. B.
 (Countersigned) C. D.

THE SECOND SCHEDULE.

(See section 37.)

Court of _____

To the officer in charge of the _____ (state name of
 prison.) You are hereby required to produce
 now a prisoner in _____, under safe and sure conduct,
 before the Court of _____ at _____
 on the _____ day of _____ next by _____
 of the _____ clock in the forenoon of the same day, there
 to answer a charge now pending before the said Court
 and after such charge has been disposed of or the said
 Court has dispensed with his further attendance, cause
 him to be conveyed under safe and sure conduct back to
 the said prison.
 The _____ day of _____

A. B.
 (Countersigned) C. D.

THE THIRD SCHEDULE.

Omitted.

THE POISONS ACT, 1977.**Act No. XXXIV of 1977.****CONTENTS.****SECTION.****SECTION**

- | | |
|--|--|
| 1. Omitted. | 6. Power to apply Act to other Poisons. |
| 2. Power to regulate possession for sale and sale of any poison in certain areas. | 7. Penalty for unlawful importation etc. |
| 3. Power to prohibit importation into the State of white arsenic except under licence. | 8. Power to issue search warrant. |
| 4. Power to regulate possession for sale and sale of white arsenic throughout the State. | 9. Rules. |
| 5. Power to regulate possession of white arsenic in certain tracts. | 10. Savings. |
| | 11. Omitted. |

THE POISON ACT, 1977.**Act No. XXXIV of 1977.**

[Sanction by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No 8372, dated 11th September, 1920 and State Council Resolution No. 1, dated 8th April, 1925. (Notification No. 14-L/81).]

An Act to provide for the regulation of the possession and sale of all poisons in certain local areas, and the importation, possession and sale of white arsenic generally.

WHEREAS it is expedient to make provisions for regulating the possession and sale of all poisons in certain local areas, and the importation, possession and sale of white arsenic; It is hereby enacted as follows:—

*Poisons generally.***1. Omitted**

¹ Short title, extent and commencement are given and regulated by Act IV of 1977.

2. (1) ¹[The Government] may, by rule, regulate within the limits of any municipality or contonment the possession for sale and the sale, whether wholesale or by retail, of any specified poison. ^{Power to regulate possession for sale and sale of any poison in certain areas.}

(2) In particular, and without prejudice to the generality of the power conferred by sub-section (1), rules made thereunder may provide for, amongst other matters,—

(a) the grant of licences to possess any specified poison for sale, wholesale or by retail, and the fixing of the fee (if any) to be charged for such licenses;

(b) the classes of persons to whom alone such licences may be granted;

(c) the classes of persons to whom alone any such poison may be sold;

(d) the maximum quantity of any such poison which may be sold to any one person;

(e) the maintenance by vendors of any such poison of registers of sales, the particulars to be entered in such registers, and the inspection of the same;

(f) the safe custody of such poisons and the labelling of the vessels, packages or covering in which any such poison is sold or possessed for sale; and

(g) the inspection and examination of any such poison when possessed for sale by any such vendor.

(3) Any substance specified as a poison in a rule made under this section shall be deemed to be a poison for the purposes of this Act.

White Arsenic.

3. ¹[The Government] may, by notification in the Jammu and Kashmir Government Gazette, prohibit, except under and in accordance with the conditions of a licence, the importation of white arsenic into the State, and may, by rule, regulate the grant of licences and prescribe conditions to be imposed thereby under this section. ^{Power to prohibit importation into the State of white arsenic except under licence.}

4. (1) ¹[The Government] may, by rule regulate within the whole or any part of the State, the possession for sale and the sale, whether wholesale or by retail, of white arsenic. ^{Power to regulate possession for sale and sale of white arsenic throughout the State.}

¹In sections 2, 3, 4, 5, 6, 9, and 10 the words "the Government" substituted for the words "His Highness" vide Act X of 1890 published in Government Gazette dated 16th January 1896.

(2) In particular and without prejudice to the generality of the power conferred by sub-section (2), rules made thereunder may provide, amongst other matters, for all or any of the matters specified in section 2, sub-section (2).

(3) Rules made under sub-section (1) may further provide that no person shall sell any powdered white arsenic unless the same is, before the sale thereof, mixed with soot, indigo or Prussian blue in the proportion of half an ounce of soot, indigo or Prussian blue at least to one pound of the white arsenic, and so in proportion for any greater or less quantity:

Provided that, where such arsenic is stated by the purchaser to be required for some purpose for which such admixture would, according to the representation of the purchaser, render it unfit, such arsenic may be sold, without such admixture, in a quantity of not less than ten pounds at any one time.

5. ¹(1) ¹[The Government] may further, by rule, regulate the possession of white arsenic in any local area in which murder by poisoning with that drug or the offence of mischief by poisoning cattle therewith appears to it to be of such frequent occurrence as to render restrictions on the possession thereof desirable.

Power to regulate possession of white arsenic in certain tract.

(2) In making any rule under sub-section (1), ¹[The Government] may direct that any breach thereof shall be punishable with imprisonment for a term which may extend to one year, or with fine which may be extend to one thousand rupees, or with both together with confiscation of the white arsenic in respect of which the breach has been committed, and of the vessels, packages or coverings in which the same is found.

Other Poisons.

6. (1) ¹[The Government] may, by notification in the Jammu and Kashmir Government Gazette apply to any specified poison other than white arsenic all are any of the provisions of this Act relating exclusively to white arsenic.

Power to apply Act to other poisons.

(2) Any substance, specified as a poison in a notification issued under sub-section (1) shall be deemed to be a poison for the purposes of this Act.

¹See footnote under section 2.

*Penalties and Procedure.***7. (1) Whoever,—**

(a) commits a breach of any rule made under section 2
Penalty for unlawful im- or section 4, or
 portation, etc.

(b) imports into the State without a licence, white arsenic the importation of which is for the time being restricted under section 3, or

(c) breaks any condition of a licence for the importation of white arsenic granted to him under section 3, shall be punishable,—

(i) on a first conviction with imprisonment for a term which may be extend to three months, or with fine which may extend to five hundred rupees, or with both, and

(ii) on a second or subsequent conviction, with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(2) Any poison in respect of which an offence has been committed under this section, together with the vessels, packages or coverings in which the same is found, and, in the case of any offence mentioned in clause (b) or clause (c) of sub-section (1) any animals and conveyances used in carrying it, shall be liable to confiscation.

8. (1) The District Magistrate, and the Sub-divisional Power to issue search- Magistrate respectively, may issue a warrant for the search of any place in which he has reason to believe or to suspect that any poison is possessed or sold in contravention of this Act or any rule thereunder or that any poison liable to confiscation under this Act is kept or concealed.

(2) The person to whom the warrant is directed may enter and search the place in accordance therewith, and the provision of the Code of Criminal Procedure, relating to search-warrants shall, as far as may be, be deemed to apply to the execution for the warrant.

9. (1) In addition to any other power to make rules here- Rules. inbefore conferred, ¹[the Government] may make rules generally to carry out the purposes and objects of this Act.

(2) Every power to make rules conferred by this Act shall be subject to the condition of the rules being made after previous publication.

(3) All rules made by ¹[the Government] under this Act shall be published in the Jammu and Kashmir Government

¹See footnote under section 2.

Gazette, and on such publication shall have effect as if enacted in this Act.

Savings.

10. (1) Nothing in this Act or in any licence granted or rule made thereunder, shall extend to or interfere with anything done in good faith in the exercise of his profession or business as such—

Savings.

(a) by a medical or veterinary practitioner, or

(b) by a chemist or druggist duly qualified to act as such under the law for the time being in force in the State, or

(c) by a chemist, druggist or compounder dispensing or compounding in compliance with the prescription of a medical or veterinary practitioner, or

(d) subject to any rules for the time being in force under section 5, by a tanner or hide-merchant.

(2) Notwithstanding anything hereinbefore contained, '[the Government] may, in its discretion, by general or special order, declare that all or any of the provisions of this Act, shall not be deemed to apply to any article, or class of articles, of commerce specified in such order, or to any poison, or class of poisons used for any purpose so specified, and may, from time to time, alter or vary any such declaration.

(3) The authority on which any power to make rules under this Act is conferred may, by general or special order, exempt any person or class of persons, either generally or in respect of any poison or poisons specified in the order, from the operation of any such rules.

11. Omitted.

¹ See footnote under section 3.

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59. Endorsements to be dated and signed by registering officer.
60. Certificate of registration.
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62. Procedure on presenting document in language unknown to registering officer.
63. Power to administer oaths and record of substance of statements.

(C). Special Duties of Sub-Registrar.

64. Procedure where document relates to land in several sub-districts.
65. Procedure where document relates to land in several districts.

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93. Omitted.
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THE REGISTRATION ACT, 1977.**Act No. XXXV of 1977.**

[Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No. 8372, dated 11th September 1920, and State Council Resolution No. 1, dated 8th April, 1925 (Notification 14-L/81).]

An Act to consolidate the enactment relating to the Registration of Documents.

WHEREAS it is expedient to consolidate the enactments relating to the registration of documents ; It is hereby enacted as follows :—

PART I.**PRELIMINARY.**

¹ 1. Omitted.

2. In this Act, unless there is anything repugnant in the subject or context,—

Definition.

(1) “addition” means the place of residence, and the profession, trade, rank and title (if any) of a person described, and, in the case of an Indian, his caste (if any) and his father's name, or where he is usually described as the son of his mother, then his mother's name ;

(2) “book” includes a portion of a book and also any number of sheets connected together with a view of forming a book or portion of a book :

(3) “district” and “sub-district” respectively mean a district and sub-district formed under this Act :

(4) Omitted.

(5) “endorsement” and “endorsed” include and apply to an entry in writing by a registering officer on a rider or covering slip to any document tendered for registration under this Act :

(6) “immoveable property” includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth, or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass :

¹ Short title, extent and commencement are given as regulated by Act IV of 1977.

(7) "lease" includes a counterpart kabuliyat, an undertaking to cultivate or occupy, and an agreement to lease :

(8) "minor" means a person who, according to the personal law to which he is subject, has not attained majority :

(9) "moveable property" includes standing timber, growing crops and grass, fruit upon and juice in trees, and property of every other description, except immoveable property : and

(10) "representative" includes the guardian of a minor and the committee or other legal curator of a lunatic or idiot.

PART II.

OF THE REGISTRATION—ESTABLISHMENT.

3. (1) ¹[The Government] shall appoint an officer to be the Inspector General of Registration for the Jammu and Kashmir State :

Inspector General of Registration. Provided that ¹[the Government] may, instead of making such appointment, direct that all or any of the powers and duties thereafter conferred and imposed upon the Inspector General shall be exercised and performed by such officer or officers, and within such local limits, as ¹[the Government] appoint in this behalf.

(2) The Inspector General may hold simultaneously any other office under Government.

4. Omitted.

5. (1) For the purpose of this Act ¹[the Government] shall form districts and sub-districts, and shall prescribe, and may alter, the limits of such districts and sub-districts.

(2) The districts and sub-districts formed under this section, together with the limits thereof, and every alteration of such limits, shall be notified in the Government Gazette.

(3) Every such alteration shall take effect on such day after the date of the notification as is therein mentioned.

6. ¹[The Government] may appoint such public officers as it thinks proper to be District Registrars and the Inspector General may appoint Sub-Registrars according to the sanctioned cadre and may also invest such public officers as he thinks proper with powers of a Sub-Registrar for the several sub-districts.

¹ In sections 3, 5, 6, 7, 10, 14, 15, 16, 17, 22, 29, 36, 69 (2) and 91 the words "the Government" substituted for the words "His Highness" vide Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

7. (1) ¹[The Government] shall establish in every district an office to be styled the office of the Registrar, and in every sub-district an office or offices to be styled the office of the Sub-Registrar or the offices of the joint Sub-Registrars.

(2) ¹[The Government] may amalgamate with any office of a Registrar any office of a Sub-Registrar subordinate to such Registrar, and may authorise any Sub-Registrar whose office has been so amalgamated to exercise and perform, in addition to his own powers and duties, all or any of the powers and duties of the Registrar to whom he is subordinate:

Provided that no such authorisation shall enable a Sub-Registrar to hear an appeal against an order passed by himself under this Act.

8. Omitted

9. Omitted.

10. (1) When any Registrar is absent otherwise than on duty in his district, or when his office is temporarily vacant any person whom the Inspector General invests with powers in this behalf, shall perform the duties of the Registrar during such absence or until ¹[the Government] fill up the vacancy.

(2) Omitted.

11. When any Registrar is absent from his office on duty in his district, he may authorise any Sub-Registrar to perform, during such absence, all the duties of a Registrar except those mentioned in sections 68 and 72.

12. When any Sub-Registrar is absent or when his office is temporarily vacant, any public officer whom the Registrar of the district authorises in this behalf shall be Sub-Registrar during such absence, or until the vacancy is filled up by the Inspector General of Registration.

13. Omitted.

14. (1) Subject to the approval of ¹[the Government] the Inspector General of Registration, may assign such salaries as he deems proper to the registering officers appointed under this Act or provide for their remuneration by fees, or partly by fees and partly by salaries.

(2) ¹[The Government] may allow proper establishments for the several offices under this Act.

15. The several Registrars and Sub-Registrars shall use a seal bearing the following inscription in English and in such other language as ^{Seal of Registering officers.} [the Government] direct :—“The seal of the Registrar (or of the Sub-Registrar) of .”

16. (1) The Inspector General of Registration shall ^{Register books and fire proof boxes.} provide for the office of every registering officer the books necessary for the purposes of this Act.

(2) The books so provided shall contain the forms from time to time prescribed by the Inspector-General, with the sanction of ¹[the Government], and the pages of such books shall be consecutively numbered in print, and the number of pages in each book shall be certified on the title-page by the officer by whom such books are issued.

(3) The Inspector General of Registration shall supply the office of every Registrar with a fire-proof box, and shall in each district make suitable provision for the safe custody of the records connected with the registration of documents in such district.

PART III.

OF REGISTRABLE DOCUMENTS.

17. (1) The following documents shall be registered, ^{Documents of which registration is compulsory.} namely :—

- (a) instruments of gift of immoveable property ;
- ⁴⁶ (b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, to or in immoveable property ;
- (c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest ;
- (d) any partnership deed ;
- (e) any adoption deed ;
- (f) any non-testamentary authority to adopt ; and
- (g) leases of immoveable property for any term exceeding one year, and reserving a yearly rent exceeding fifty rupees :

¹ See footnote under section 2.

¹[(h) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future any right, title or interest, whether vested or contingent, to or in immoveable property:]

Provided that ²[the Government] may, by order published in the Jammu and Kashmir Government Gazette, exempt from the operation of this sub-section any such leases executed in any district or part of a district.

(2) Nothing in clauses (b) and (c) of sub-section (1) applies to—

(i) any composition-deed ; or

(ii) any instrument relating to shares in a Joint Stock Company, notwithstanding that the assets of such Company consist in whole or in part of immoveable property ; or

(iii) any debenture issued by any such Company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immoveable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immoveable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures ; or

(iv) any endorsement upon or transfer of any debenture issued by any such Company ; or

(v) any document not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest to or in immoveable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest ; or

(vi) any decree or order of a Court ²[except a decree or order expressed to be made on a compromise and comprising immoveable property other than that which is the subject-matter of the suit or proceeding.]

(vii) any grant of immoveable property by Government ; or

(viii) any instrument of partition made by a Revenue officer ; or

(ix) Omitted.

¹Clause (h) to section 17 (1) added vide Act VII of 1996 published in Government Gazette dated 15th Bhadon 1996.

²See footnote under section 3.

³In section 17 (2) (vi) words within brackets substituted for the words "and any award" vide Act VII of 1996 published in Government Gazette dated 15th Bhadon 1996

(x) any order granting a loan under the Agriculturists Loans Act, or instrument for securing the repayment of a loan made under that Act; or

(xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage.

(xii) Omitted.

¹[EXPLANATION—A document purporting or operating to effect a contract for the sale of immoveable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any interest-money of the whole or any part of the purchase-money.]

18. Any of the following documents may by registered under this Act, namely:—

Documents of which registration is optional.

(a) leases of immoveable property from year to year or for any term below one year, and reserving a yearly rent of rupees fifty or less and leases exempted under section 17;

(b) instruments (other than wills) which purport or operate to create, declare, assign, limit or extinguish any right, title or interest to or in moveable property;

(c) wills; and

(d) all other documents not required by section 17 to be registered.

19. If any document duly presented for registration be in a language which the registering officer does not understand, and which is not commonly used in the district, he shall refuse to register the document, unless it be accompanied by a true translation into a language commonly used in the district and also by a true copy.

Documents in language not understood by registering officer.

20. (1) The registering officer may in his discretion refuse to accept for registration any document in which any interlineation, blank, erasure or alteration appears, unless the persons executing the document attest with their signatures or initials such interlineation, blank, erasure or alteration.

Documents containing interlineations, blanks, erasures or alterations.

(2) If the registering officer registers any such document, he shall, at the time of registering the same, make a note in the register of such interlineation, blank, erasure or alteration.

¹Explanation to section 17 (2) after clause (xii) added by Act II of 1983 published in Government Gazette dated 18th Mar 1983.

21. (1) No non-testamentary document relating to im-
Description of property
and maps or plans. moveable property shall be accepted for
 registration unless it contains a des-
 cription of such property sufficient to identify the same.

(2) Houses in towns shall be described as situate on
 the north or other side of the street or road (which should be
 specified) to which they front, and by their existing and former
 occupancies, and by their numbers if the houses in such
 street or road are numbered.

(3) Other houses and lands shall be described by their
 names, if any, and as being in the territorial division in which
 they are situate, and by their superficial contents, the
 roads and other properties on which they abut, and their
 existing occupancies, and also, whenever it is practicable, by
 reference to a Government map or survey.

(4) No non-testamentary document containing a map
 or plan of any property comprised therein shall be accepted
 for registration unless it is accompanied by a true copy of the
 map or plan, or, in case such property is situate in several
 districts, by such number of true copies of the map or plan as
 are equal to the number of such districts.

22. (1) Where it is, in the opinion of '[the Government]
Description of houses
and land by reference to
Government maps or sur-
veys. practicable to describe houses, not being
 houses in towns, and land by reference to
 a Government map or survey, '[the Govern-
 ment] may, by rule made under this Act,
 require that such houses and lands as aforesaid shall, for the
 purposes of section 21, be so described.

(2) Save as otherwise provided by any rule made under
 sub-section (1), failure to comply with the provisions of section
 21, sub-section (2) or sub-section (3), shall not disentitle a
 document to be registered if the description of the property to
 which it relates is sufficient to identify that property.

PART IV.

OF THE TIME OF PRESENTATION.

23. Subject to the provisions contained in sections 24, 25
Time for presenting do-
cuments. and 26, no document other than a will
 shall be accepted for registration unless
 presented for that purpose to the proper
 officer within four months from the date of its execution :

¹See footnote under section 3.

Provided that a copy of a decree or order may be presented within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final.

23-A. Notwithstanding anything to the contrary contained in this Act, if in any case a document requiring registration has been accepted for registration by a Registrar or Sub-Registrar from a person not duly empowered to present the same, and has been registered, any person claiming under such document may, within four months from his first becoming aware that the registration of such document is invalid, present such document or cause the same to be presented, in accordance with the provisions of part VI for re-registration in the office of the Registrar of the district in which the document was originally registered; and upon the Registrar being satisfied that the document was so accepted for registration from a person not duly empowered to present the same, he shall proceed to the re-registration of the document as if it had not been previously registered, and as if such presentation for re-registration was a presentation for registration made within the time allowed therefor under Part IV, and all the provisions of this Act, as to registration of documents, shall apply to such re-registration; and such document, if duly re-registered in accordance with the provisions of this section, shall be deemed to have been duly registered for all purposes from the date of its original registration:

Provided that within three months from the commencement of this Act, any person claiming under a document to which this section applies may present the same or cause the same to be presented for re-registration in accordance with this section whatever may have been the time when he first became aware that the registration of the document was invalid.

24. Where there are several persons executing a document at different times, such document may be presented for registration and re-registration within four months from the date of each execution.

25. (1) If, owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, in the State is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the Registrar, in cases where the delay in presentation does not exceed four months, may direct that, on payment of a fine not exceeding five times the amount of the proper registration-fee,

such document shall be accepted for registration.

(2) Any application for such direction may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

26. When a document purporting to have been executed by Documents executed out of the State. all or any of the parties out of the State is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the registering officer, if satisfied—

(a) that the instrument was so executed, and

(b) that it has been presented for registration within four months after its arrival in the State, may, on payment of the proper registration-fee, accept such document for registration.

27. A will may at any time be presented for registration Wills may be presented or deposited at any time. or deposited in manner hereinafter provided.

PART V.

OF THE PLACE OF REGISTRATION.

28. Save as in this part otherwise provided, every document mentioned in section 17, sub-section Place for registering documents relating to land. (1) clauses (a), (b), (c), (d), (e), (f), and (g), and section 18, clause (a) shall be presented for registration in the office of the Sub-Registrar within whose sub-district the whole or some portion of the property to which such document relates is situate.

29. (1) Every document other than a document referred Place for registering other documents. to in section 28, and a copy of decree or order, may be presented for registration either in the office of the Sub-Registrar in whose sub-district the document was executed, or in the office of any other Sub-Registrar under ¹[the Government] at which all the persons executing and claiming under the document desire the same to be registered.

(2) A copy of a decree or order may be presented for registration in the office of the Sub-Registrar in whose sub-district the original decree or order was made, or, where the decree or order does not affect immoveable property, in the office of any other Sub-Registrar under ¹[the Government] at which all the persons claiming under the decree or order desire the copy to be registered.

¹See footnote under section 2.

30. (1) Any Registrar may in his discretion receive and register any document which might be registered by any Sub-Registrar subordinate to him.

Registration by Registrars in certain cases.

(2) Omitted.

31. In ordinary cases the registration or deposit of documents under this Act shall be made only at the office of the officer authorised to accept the same for registration or deposit :

Registration or acceptance for deposit at private residence.

Provided that such officer may on special cause being shown attend at the residence of any person desiring to present a document for registration or to deposit a will, and accept for registration or deposit such document or will.

PART VI.

OF PRESENTING DOCUMENTS FOR REGISTRATION.

32. Except in the cases mentioned in section 31 and section 89, every document to be registered under this Act whether such registration be compulsory or optional, shall be presented at the proper registration office,—

Persons to present documents for registration.

- (a) by some person executing or claiming under the same, or, in the case of copy of a decree or order, claiming under the decree or order, or
- (b) by the representative or assign of such person, or,
- (c) by the agent of such person, representative or assign, duly authorised by power-of-attorney executed and authenticated in manner hereinafter mentioned.

33. (1) For the purposes of section 32, the following powers-of-attorney shall alone be recognized, namely :—

Power-of-attorney recognizable for purposes of section 32.

(a) if the principal at the time of executing the power-of-attorney resides in any part of the State, a power-of-attorney executed before and authenticated by the Registrar or Sub-Registrar within whose district or sub-district the principal resides ;

(b) if the principal at the time aforesaid does not reside in the State, a power-of-attorney executed before and authenticated by a Notary Public, or any Court, Judge, Magistrate, British Consul or Vice-Consul, or representative of His Majesty or of the Government of India :

Provided that the following persons shall not be required to attend at any registration-office for the purpose of executing any such power-of-attorney as is mentioned in clause (a) of this section, namely ;—

- (i) persons who by reason of bodily infirmity are unable without risk or serious inconvenience so to attend ;
- (ii) persons who are in jail under civil or criminal process ; and
- (iii) persons exempt by law from personal appearance in Court.

(2) In the case of every such person the Registrar or Sub-Registrar as the case may be, if satisfied that the power-of-attorney has been voluntarily executed by the person purporting to be the principal, may attest the same without requiring his personal attendance at the office aforesaid.

(3) To obtain evidence as to the voluntary nature of the execution, the Registrar or Sub-Registrar may either himself go to the house of the person purporting to be the principal, or to the jail in which he is confined, and examine him, or issue a commission for his examination.

(4) Any power-of-attorney mentioned in this section may be proved by the production of it without further proof when it purports on the face of it to have been executed before and authenticated by the person or Court hereinbefore mentioned in that behalf.

34. (1) Subject to the provisions contained in this Part and in sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under this Act unless the persons executing such document, or their representatives, assigns or agents authorised as aforesaid, appear before the registering officer within the time allowed for presentation under sections 23, 24, 25 and 26 :

Enquiry before registra-
tion by registering officer.

Provided that, if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that on payment of a fine not exceeding five times the amount of the proper registration-fee, in addition to the fine, if any, payable under section 25, the document may be registered.

(2) Appearances under sub-section (1) may be simultaneous or at different times.

(3) The registering officer shall thereupon—

- (a) enquire whether or not such document was executed by the persons by whom it purports to have been executed ;
- (b) satisfy himself as to the identity of the persons

appearing before him and alleging that they have executed the document ; and,

(c) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear.

(4) Any application for a direction under the proviso to sub-section (1) may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar, to whom he is subordinate.

(5) Nothing in this section applies to copies of decrees or orders.

35. (1) (a) If all the persons executing the document appear personally before the registering officer and are personally known to him, or if he be otherwise satisfied that they are the persons they represent themselves to be, and if they all admit the execution of the document, or

(b) if in the case of any person appearing by a representative, assign or agent, such representative, assign or agent admits the execution, or

(c) if the person executing the document is dead, and his representative or assign appears before the registering officer and admits the execution,

the registering officer shall register the document as directed in sections 58 to 61, inclusive.

(2) The registering officer may, in order to satisfy himself that the persons appearing before him are the persons they represent themselves to be, or for any other purpose contemplated by this Act examine any one present in his office.

(3) (a) If any person by whom the document purports to be executed denies its execution, or

(b) if any such person appears to the registering officer to be a minor, an idiot or a lunatic, or

(c) if any person by whom the document purports to be executed is dead, and his representative or assign denies its execution,

the registering officer shall refuse to register the document as to the person so denying, appearing or dead :

Provided that, where such officer is a Registrar, he shall follow the procedure prescribed in Part XII:

¹[Provided further that the Inspector General of Registration with the sanction of His Highness the Maharaja Bahadur, may, by notification in the Jammu and Kashmir Government Gazette, declare that any Sub-Registrar named in the notification shall

¹ Further proviso to section 35 (3) added *vide* Act 2 of 1938 published in Government Gazette dated 18th Mar 1938.

in respect of documents the execution of which is denied, be deemed to be Registrar for the purpose of this sub-section and Part XII.]

PART VII.

OF ENFORCING THE APPEARANCE OF EXECUTANTS AND WITNESSES.

36. If any person presenting any document for registration, or claiming under any document which is capable of being so presented, desires the appearance of any person whose presence or testimony is necessary for the registration of such document, the registering officer may, in his discretion, call upon such officer or Court as ¹[the Government] direct in this behalf to issue a summons requiring him to appear at the registration-office, either in person or by duly authorised agent, as in the summons may be mentioned, and at a time named therein.

37. The officer or Court, upon receipt of the peon's fee payable in such cases, shall issue the summons accordingly, and cause it to be served upon the person whose appearance is so required.

38. (1) (a) A person who by reason of bodily infirmity is unable without risk or serious inconvenience to appear at the registration-office, or

(b) a person in jail under civil or criminal process, or
(c) persons exempt by law from personal appearance in Court, and who would but for the provision next hereinafter contained be required to appear in person at the registration-office,

shall not be required so to appear.

(2) In the case of every such person the registering officer shall either himself go to the house of such person, or to the jail in which he is confined, and examine him or issue a commission for his examination.

39. The law in force for the time being as to summonses, commissions and compelling the attendance of witnesses, and for their remuneration in suit before Civil Courts, shall, save as aforesaid and *mutatis mutandis*, apply to any summons or

¹See footnote under section 3.

commission issued and any person summoned to appear under the provisions of this Act.

PART VIII.

OF PRESENTING WILLS AND AUTHORITIES TO ADOPT.

40. (1) The testator, or after his death any person claiming as executor or otherwise under a will, may present it to any Registrar or Sub-Registrar for registration.

(2) The donor, or after his death the donee, of any authority to adopt, or the adoptive son, may present it to any Registrar or Sub-Registrar for registration.

41. (1) A will or an authority to adopt, presented for registration by the testator or donor, may be registered in the same manner as any other document.

(2) A will or authority to adopt presented for registration by any other person entitled to present it shall be registered if the registering officer is satisfied :—

(a) that the will or authority was executed by that testator or donor, as the case may be ;

(b) that the testator or donor is dead ; and

(c) that the person presenting the will or authority is, under section 40, entitled to present the same.

PART IX.

OF THE DEPOSIT OF WILLS.

42. Any testator may, either personally or by duly authorised agent, deposit with any Registrar his will in a sealed cover superscribed with the name of the testator and that of his agent (if any) and with a statement of the nature of the document.

43. (1) On receiving such cover, the Registrar, if satisfied that the person presenting the same for deposit is the testator or his agent, shall transcribe in his Register-book No. 5 the superscription aforesaid, and shall note in the same book and on the said cover the year, month, day and hour of such presentation and receipt, and the names of any persons who may testify to the identity of the testator or his agent, and any legible inscription which may be on the seal of the cover.

(2) The Registrar shall then place and retain the sealed cover in his fire-proof box.

44. If the testator who has deposited such cover wishes to withdraw it, he may apply, either personally or by duly authorised agent, to the Registrar who holds it in deposit, and such Registrar, if satisfied that the applicant is actually the testator or his agent, shall deliver the cover accordingly.

45. (1) If, on the death of a testator who has deposited a sealed cover under section 42, application be made to the Registrar who holds it in deposit to open the same, and if the Registrar is satisfied that the testator is dead, he shall, in the applicant's presence, open the cover, and, at the applicant's expense, cause the contents thereof to be copied into his Book No. 3.

(2) When such copy has been made, the Registrar shall re-deposit the original will.

46 (1) Nothing hereinbefore contained shall affect the provisions of section 81 of the Probate and Administration Act or the power of any Court by order to compel the production of any will.

(2) When any such order is made, the Registrar shall, unless the will has been already copied under section 45, open the cover and cause the will to be copied into his Book No. 3 and make a note on such copy that the original has been removed into Court in pursuance of the order aforesaid.

PART X.

OF THE EFFECTS OF REGISTRATION AND NON-REGISTRATION.

47. A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration.

48. All non-testamentary documents duly registered under this Act and relating to any moveable property, shall take effect against any oral agreement or declaration relating to such property, unless where the agreement or declaration has been accompanied or followed by delivery of

possession ¹[and the same constitutes a valid transfer under any law for the time being in force].

49. No document required by section 17 ²[or by any provision of the Transfer of Property Act to be registered shall—

Effect of non-registration of documents required to be registered.

(a) affect any immoveable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered.

50. (1) Every document falling under any exemption mentioned in section 17, or clauses (a) and (b) of section 18, shall, if duly registered, take effect as regards the property comprised therein, against every unregistered document relating to the same property, and not being a decree or order, whether such unregistered documents be of the same nature as the registered document or not.

Certain registered documents relating to land to take effect against unregistered documents.

PART XI.

OF THE DUTIES AND POWERS OF REGISTERING OFFICERS.

(A) *As to the Register-books and indexes.*

51. (1) The following books shall be kept in the several offices hereinafter named, namely:—

Register books to be kept in the several offices.

A—In all registration offices—

Book 1, "Register of non-testamentary documents relating to immoveable property";

Book 2, "Record of reasons for refusal to register";

Book 3, "Register of wills and authorities to adopt"; and

Book 4, "Miscellaneous Register";

B—In the offices of Registrars—

Book 5, "Register of deposits of wills".

(2) In Book 1 shall be entered or filed all documents or memoranda registered under sections 17, 18 and 89 which relate to immoveable property, and are not wills.

¹In section 48 words within brackets added *vide* Act VII of 1996 published in Government Gazette dated 15th Bhadon 1996.

²In section 49 words within bracket, added *vide* Act VII of 1996 published in Government Gazette dated 15th Bhadon 1996.

(3) In Book 4 shall be entered all documents registered under clauses (b) and (d) of section 18 which do not relate to immoveable property.

(4) Nothing in this section shall be deemed to require more than one set of books where the office of the Registrar has been amalgamated with the office of a Sub-Registrar.

52. (1) (a) The day, hour and place of presentation, and the signature of every person presenting a document for registration, shall be endorsed on every such document at the time of presenting it ;

(b) a receipt for such document shall be given by the registering officer to the person presenting the same ; and,

(c) subject to the provisions contained in section 62, every document admitted to the registration shall without unnecessary delay be copied in the book appropriated therefor according to the order of its admission.

(2) All such books shall be authenticated at such intervals and in such manner as is from time to time prescribed by the Inspector General.

53. All entries in each book shall be numbered in a consecutive series, which shall commence and terminate with the year, a fresh series being commenced at the beginning of each year.

54. In every office in which any of the books herein-before mentioned are kept, there shall be prepared current indexes of the contents of such books ; and every entry in such indexes shall be made, so far as practicable, immediately after the registering officer has copied, or filed a memorandum of, the document to which it relates.

55. (1) Four such indexes shall be made in all registration offices, and shall be named, respectively, Index No. I, Index No. II, Index No. III, and index No. IV.

(2) Index No. I shall contain the names and additions of all persons executing and of all persons claiming under every document entered or memorandum filed in Book I.

(3) Index No. II shall contain such particulars mentioned in section 21 relating to every such document and memorandum as the Inspector General from time to time directs in that behalf.

(4) Index No. III shall contain the names and additions of all persons executing every will and authority entered in Book No. 3 and of the executors and persons respectively appointed thereunder, and after the death of the testator or the

donor (but not before) the names and additions of all persons claiming under the same.

(5) Index No. IV shall contain the names and additions of all persons executing and of all persons claiming under every document entered in Book No. 4.

(6) Each Index shall contain such other particulars, and shall be prepared in such form, as the Inspector General from time to time directs.

¹56. Repealed.

57. Subject to the previous payment of the fees payable in that behalf, the Books Nos. 1 and 2 and the Indexes relating to Book No. 1 shall be at all times open to inspection by any person applying to inspect the same; and, subject to the provisions of section 62, copies of entries in such books shall be given to all persons applying for such copies.

(2) Subject to the same provisions, copies of entries in Book 3 and in the index relating thereto shall be given to the persons executing the documents to which such entries relate, or to their agents, and after the death of the executants (but not before) to any person applying for such copies.

(3) Subject to the same provisions, copies of entries in Book No. 4 and in the Index relating thereto shall be given to any person executing or claiming under the documents to which such entries respectively refer, or to his agent or representative.

(4) The requisite search under this section for entries in Books Nos. 3 and 4 shall be made only by the registering officer.

(5) All copies given under this section shall be signed and sealed by the registering officer, and shall be admissible for the purpose of proving the contents of the original documents.

(B) As to the Procedure on admitting to Registration.

58. (1) On every document admitted to registration, other than a copy of a decree or order, or a copy sent to a registering officer under section 89, there shall be endorsed from time to time the following particulars, namely :—

(a) the signature and addition of every person admitting the execution of the document, and, if such execution has been admitted by the representative, assign or agent of any person,

the signature and addition of such representative, assign or agent;

(b) the signature and addition of every person examined in reference to such document under any of the provisions of this Act; and

(c) any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document, and any admission of receipt of consideration, in whole or in part, made in his presence in reference to such execution.

(2) If any person admitting the execution of a document refuses to endorse the same, the registering officer shall nevertheless register it but shall at the same time endorse a note of such refusal.

59. The registering officer shall affix the date and his signature to all endorsements made under sections 52 and 58, relating to the same document and made in his presence on the same day.

Endorsements to be dated and signed by registering officer.

60. (1) After such of the provisions of sections 34, 35, 58, and 59 as apply to any document presented for registration have been complied with, the registering officer shall endorse thereon a certificate containing the word "registered," together with the number and page of the book in which the document has been copied.

(2) Such certificate shall be signed, sealed and dated by the registering officer, and shall then be admissible for the purpose of proving that the document has been duly registered in manner provided by this Act and that facts mentioned in the endorsements referred to in section 59 have occurred as therein mentioned.

61. (1) The endorsements and certificate referred to and mentioned in sections 59 and 60 shall thereupon be copied into the margin of the Register-book, and the copy of the map or plan (if any) mentioned in section 21 shall be filed in Book No. 1.

Endorsements and certificate to be copied and thereupon, on sanction by His Highness required to be submitted to him, document returned.

(2) If a document falls under clause (a) or (b) of sub-section (1) of section 17, the registering officer shall, after its registration in his office, submit it in the manner prescribed in this behalf for His Highness' sanction.

¹(2-a). Notwithstanding anything to the contrary in sub-section (2) or in any other law, rule or order, His Highness may,

¹Section 61 sub-section (2-a) added and words within brackets in sub-section (3) substituted vide Council Resolution No. 124 dated 20th March, 1926 (Notification 1-L 83) published in Government Gazette dated 5th Jeth 1983. (Extra)

by order published in the Jammu and Kashmir Government Gazette, subject to such conditions or restrictions (if any) as may be specified by His Highness, dispense with the submission to him, for his sanction of all or any class of the documents referred to in sub-section (2) and may also, by such order and subject to such conditions or restrictions (if any) authorise any officer to give sanction to all or any class of such documents.

(3) '[On receipt of the sanction required under sub-section (2) or (2-a) as the case may be, or if the document does not require submission for such sanction,] on compliance with the procedure hereinbefore provided, the registration of the document shall be deemed complete, and the document shall then be returned to the person who presented the same for registration, or to such other person (if any) as he has nominated in writing in this behalf on the receipt mentioned in section 52.

62. (1) When a document is presented for registration under section 19, the translation shall be transcribed in the register of documents of the nature of the original, and, together with the copy referred to in section 19, shall be filed in the registration office.

(2) The endorsement and certificate respectively mentioned in sections 59 and 60 shall be made on the original, and for the purpose of making the copies and memoranda required by sections 57, 64, 65 and 66, the translation shall be treated as if it were the original.

63. (1) Every registering officer may at his discretion administer an oath to any person examined by him under the provisions of this Act.

(2) Every such officer may also at his discretion record a note of the substance of the statement made by each such person, and such statement shall be read over, or (if made in a language with which such person is not acquainted) interpreted to him in a language with which he is acquainted, and, if he admits the correctness of such note, it shall be signed by the registering officer.

(3) Every such note so signed shall be admissible for the purpose of proving that the statements therein recorded were made by the persons and under the circumstances therein stated.

(C) *Special Duties of Sub-Registrar.*

64. Every Sub-Registrar on registering a non-testamentary document relating to immoveable property not wholly situate in his own sub-district shall make a memorandum thereof and of the endorsement and certificate (if any) thereon, and send the same to every other Sub-Registrar subordinate to the same Registrar as himself in whose sub-district any part of such property is situate and such Sub-Registrar shall file the memorandum in his Book No. 1.

Procedure where document relates to land in several sub-districts.

65. (1) Every Sub-Registrar on registering a non-testamentary document relating to immoveable property situate in more districts than one shall also forward a copy thereof and of the endorsement and certificate (if any) thereon, together with a copy of the map or plan (if any) mentioned in section 21, to the Registrar of every district in which any part of such property situate other than the district in which his own sub-district is situate.

Procedure where document relates to land in several districts.

(2) The Registrar on receiving the same shall file in his Book No. 1 the copy of document and the copy of the map or plan (if any) and shall forward a memorandum of the document to each of the Sub-Registrars subordinate to him within whose sub-district any part of such property is situate : and every Sub-Registrar receiving such memorandum shall file it in his Book No. 1.

(D) *Special Duties of Registrar.*

66. (1) On registering any non-testamentary document relating to immoveable property, the Registrar shall forward a memorandum of such document to each Sub-Registrar subordinate to himself in whose sub-district any part of the property is situate.

Procedure after registration of documents relating to land.

(2) The Registrar shall also forward a copy of such document, together with a copy of the map or plan (if any) mentioned in section 21, to every other Registrar in whose district any part of such property is situate.

(3) Such Registrar on receiving any such copy shall file it in his Book No. 1, and shall also send a memorandum of the copy to each of the Sub-Registrars subordinate to him within whose sub-district any part of the property is situate.

(4) Every Sub-Registrar receiving any memorandum under this section shall file it in his Book No. 1.

67. On any document being registered under section 30, sub-section (2), a copy of such document and of the endorsements and certificate thereon shall be forwarded to every Registrar within whose district any part of the property to which the instrument relates is situate, and the Registrar receiving such copy shall follow the procedure prescribed for him in section 66 sub-section (1).

Procedure after registration under section 30, sub-section (2).

(E) Of the controlling Powers of Registrars and Inspector General.

68. (1) Every Sub-Registrar shall perform the duties of his office under the superintendence and control of the Registrar in whose district the office of such Sub-Registrar is situate.

Power of Registrar to superintend and control Sub-Registrars.

(2) Every Registrar shall have authority to issue (whether on complaint or otherwise) any order consistent with this Act which he considers necessary in respect of any act or omission of any Sub-Registrar subordinate to him or in respect of the rectification of any error regarding the book or the office, in which any document has been registered.

69. (1) The Inspector General shall exercise a general superintendence over all the registration offices in the territories under His Highness and shall have power from time to time to make rules consistent with this Act,—

Power of Inspector General to superintend registration offices and make rules.

(a) providing for the safe custody of books, papers and documents;

(b) omitted;

(c) omitted;

(d) regulating the amount of fines imposed under section 25 and 34, respectively;

(e) regulating the exercise of the discretion reposed in the registering officer by section 63;

(f) regulating the form in which registering officers are to make memoranda of documents;

(g) regulating the authentication by Registrars and Sub-Registrars of the books kept in their respective offices under section 51;

(h) declaring the particulars to be contained in indexes Nos. I, II, III and IV, respectively; and

(i) generally, regulating the proceedings of the Registrars and Sub-Registrars.

(2) The rules so made shall be submitted to ¹[the Government] for approval, and, after they have been approved, they shall be published in the Government Gazette, and on publication shall have effect as if enacted in this Act.

70. The Inspector General may also, in the exercise of his discretion, remit wholly or in part the difference between any fine levied under section 25 or section 34, and the amount of the proper registration fee.

PART XII.

OF REFUSAL TO REGISTER.

71. (1) Every Sub-Registrar refusing to register a document, except on the ground that the property to which it relates is not situate within his sub-district, shall make an order of refusal and record his reasons for such order in his book No. 2, and endorse the words "registration refused" on the document; and on application made by any person executing or claiming under the document, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded.

(2) No registering officer shall accept for registration a document so endorsed unless and until under the provisions hereinafter contained, the document is directed to be registered.

72. (1) Except where the refusal is made on the ground of denial of execution, an appeal shall lie against an order of a Sub-Registrar refusing to admit a document to registration (whether the registration of such document is compulsory or optional) to the Registrar to whom such Sub-Registrar is subordinate, if presented to such Registrar within thirty days from the date of the order; and the Registrar may reverse or alter such order.

(2) If the order of the Registrar directs the document to be registered and the document is duly presented for registration within thirty days after the making of such order, the Sub-Registrar shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in

¹See footnotes under section 3.

sections 58, 59 and 60 ; and such registration shall take effect as if the document had been registered when it was first duly presented for registration.

73. (1) When a Sub-Registrar has refused to register a document on the ground that any person by whom it purports to be executed, or his representative or assign, denies its execution, any person claiming under such document, or his representative, assign or agent authorised as aforesaid, may, within thirty days after the making of the order of the refusal, apply to the Registrar to whom such Sub-Registrar is subordinate in order to establish his right to have the document registered.

Application to Registrar where Sub Registrar refuses to register on ground of denial of execution.

(2) Such application shall be in writing and shall be accompanied by a copy of the reasons recorded under section 71, and the statements in the application shall be verified by the applicant in manner required by law for the verification of plaints.

74. In such case, and also where such denial as aforesaid is made before a Registrar in respect of a document presented for registration to him, the Registrar shall, as soon as conveniently may be, enquire—

Procedure of Registrar on such application.

- (a) whether the document has been executed ;
- (b) whether the requirements of the law for the time being in force have been complied with on the part of the applicant or person presenting the document for registration, as the case may be, so as to entitle the document to registration.

75. (1) If the Registrar finds that the document has been executed and that the said requirements have been complied with, he shall order the document to be registered.

Order by Registrar to register and procedure thereon.

(2) If the document is duly presented for registration within thirty days after the making of such order, the registering officer shall obey the same and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59 and 60.

(3) Such registration shall take effect as if the document had been registered when it was first duly presented for registration.

(4) The Registrar may, for the purpose of any enquiry under section 74, summon and enforce the attendance of witnesses, and compel them to give evidence, as if he were a Civil Court, and he may also direct by whom the whole or any part of the costs of any such enquiry shall be paid, and

such costs shall be recoverable as if they had been awarded in a suit under the Code of Civil Procedure.

Order of refusal by Registrar.

76. (1) Every Registrar refusing—

(a) to register a document except on the ground that the property to which it relates is not situate within his district or that the document ought to be registered in the office of a Sub-Registrar, or

(b) to direct the registration of a document under section 72 or section 75,

shall make an order of refusal and record the reasons for such order in his Book No. 2, and, on application made by any person executing or claiming under the document, shall, without unnecessary delay, give him a copy of the reasons so recorded.

(2) No appeal lies from any order by a Registrar under this section or section 72.

77. (1) Where the Registrar refuses to order the document to be registered, under section 72 or section 76, any person claiming under such document, or his representative, assign or agent, may, within thirty days after the making of the order of refusal, institute in the Civil Court, within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the document to be registered in such office if it be duly presented for registration within thirty days after the passing of such decree.

(2) The provisions contained in sub-sections (2) and (3) of section 75 shall, *mutatis mutandis*, apply to all documents presented for registration in accordance with any such decree, and, notwithstanding anything contained in this Act, the document shall be receivable in evidence in such suit.

PART XIII.

OF THE FEES FOR REGISTRATION, SEARCHES AND COPIES.

78. The fees payable under this Act are :—

I.—For registration of documents :—

Documents.	Amount or value entered in the document.	Fee payable.
		Rs. A. P.
1. Sale deeds and mortgage deeds...	When it does not exceed Rs. 20 ...	1 0 0
	" exceed Rs. 20 but does not exceed Rs. 30 ...	1 8 0
	" " 30 " " 40 ...	2 0 0
	" " 40 " " 50 ...	2 8 0
	" " 50 " " 60 ...	3 0 0
	" " 60 " " 70 ...	3 8 0
	" " 70 " " 80 ...	4 0 0
	" " 80 " " 90 ...	4 8 0
	" " 90 " " 100 ...	5 0 0
	" " 100 " " 1000 ...	
	on every Rs. 100 or part thereof in excess of Rs. 100.	3 0 0
	When it exceeds Rs. 1,000, for every Rs. 100 or part thereof in excess of Rs. 1,000 ...	1 0 0
2. Wills and authorities to adopt	4 0 0
3. Deeds of gift or of settlement	2 0 0
4. Deeds of partition, Farkhatl and partnership	4 0 0
5. Other deeds	2 0 0

II. For searching the registers ...

Rupees two for the register of each year.

III. For copy of a copy ...

According to the rates prescribed in the copying rules.

IV. For the issue of a commission ...

The amount fixed by the registering Officer as proper.

V. For filling translation

Eight annas.

VI. For attending private residences ... Rupees five, and if such residence is outside the limits of the head-quarter four annas per mile for travelling expenses.

¹79. ²[The Government] may by notification in the Jammu and Kashmir Government Gazette remit or reduce the fees chargeable under section 78 with respect to any document or class of documents.

80. All fees for the registration of documents under this Act shall be payable on the presentation of such documents.

Fees payable on presentation.

PART XIV.

OF PENALTIES.

81. Every registering Officer appointed under this Act and every person employed in his office for the purposes of this Act, who, being charged with the endorsing, copying, translating or registering of any document presented or deposited under its provisions, endorses, copies, translates or registers such document in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury, as defined in the ³Ranbir Dand Bidhi, to any person, shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

Penalty for incorrectly endorsing, copying, translating or registering documents with intent to injure.

82. Whoever—

Penalty for making false statements, delivering false copies or translations, false personation, and abetment.

(a) intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not, before any officer acting in execution of this Act, in any proceeding or inquiry under this Act ; or

(b) intentionally delivers to a registering officer, in any proceeding under section 19 or section 21, a false copy or translation of a document, or a false copy of a map or plan ; or

¹Section 79 inserted *vide* Notification 20-L/86 published in Government Gazette dated 14th Chet 1986.

²In section 79 "The Government" substituted for "His Highness" *vide* Act II of 1997 published in Government Gazette dated 21st Baisakh, 1997.

³Ranbir Penal Code.

(c) falsely personates another, and in such assumed character presents any document or makes any admission or statement, or causes any summons or commission to be issued, or does any other act in any proceeding or enquiry under this Act ; or

(d) abets anything made punishable by this Act ; shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

83. (1) A prosecution for any offence under this Act coming to the knowledge of a registering officer in his official capacity may be commenced by or with the permission of the Inspector General, the Registrar or the Sub-Registrar, in whose territories, district or sub-district, as the case may be, the offence has been committed.

(2) Offences punishable under this Act shall be triable by any Court or officer exercising powers not less than those of a Magistrate of the second class.

84. (1) Every registering officer appointed under this Act shall be deemed to be a public servant within the meaning of the 'Ranbir Dand Bidhi'.

(2) Every person shall be legally bound to furnish information to such registering officer when required by him to do so.

(3) In section 175 of the Ranbir Dand Bidhi the words "judicial proceeding" shall be deemed to include any proceeding under this Act.

PART XV.

MISCELLANEOUS.

85. Documents (other than wills) remaining unclaimed in any registration office for a period exceeding two years may be destroyed.

86. No registering officer shall be liable to any suit, claim or demand by reason of anything in good faith done or refused in his official capacity.

87. Nothing done in good faith pursuant to this Act or the law of registration heretofore in force, by any registering officer, shall be deemed invalid merely by reason of any defect in his appointment or procedure.

¹Ranbir Penal Code.

²Section 229 of Ranbir Penal Code.

88. (1) Notwithstanding anything herein contained, it shall not be necessary for any officers of Government, or for any official Trustee or Official Assignee, or for the Receiver or Registrar of the High Court to appear in person or by agent at any registration office in any proceeding connected with the registration of any instrument executed by him in his official capacity, or to sign as provided in section 58.

Registration of documents executed by Government officers or certain public functionaries.

(2) Where any instrument is so executed, the registering officer to whom such instrument is presented for registration may, if he thinks fit, refer to such officer of the Government, Official Trustee, Official Assignee, Receiver or Registrar, as the case may be, for information respecting the same, and, on being satisfied of the execution thereof, shall register the instrument.

89. (1) Every officer granting a loan under the Land Improvement Loans Act, shall send a copy of his order to the registering officer within the local limits of whose jurisdiction the whole or any part of the land to be improved or of the land to be granted as collateral security, is situate, and such registering officer shall file the copy in his Book No. I.

Copies of certain orders, certificates and instruments to be sent to registering officers and filed.

(2) Omitted.

(3) Every officer granting a loan under the Agriculturists' Loans Act, shall send a copy of any instrument whereby immovable property is mortgaged for the purpose of securing the repayment of the loan, and, if any such property is mortgaged for the same purpose in the order granting the loan, a copy also of that order to the registering officer within the local limits of whose jurisdiction the whole or any part of the property so mortgaged is situate, and such registering officer shall file the copy or copies, as the case may be, in his Book No. I.

(4) Omitted

Exemptions from Act.

90. (1) Nothing contained in this Act or the State Law of Registration heretofore in force shall be deemed to require, or to have at any time required, the registration of any of the following documents or maps, namely:—

Exemption of certain documents executed by or in favour of Government.

(a) documents issued, received or attested by any officer engaged in making a settlement or revision of settlement of

land revenue, and which form part of the records of such settlement ; or

(b) documents and maps issued, received or authenticated by any officer engaged on behalf of Government in making or revising the survey of any land, and which form part of the record of such survey ; or

(c) documents which, under any law for the time being in force, are filed periodically in any revenue-office by patwaris or other officers charged with the preparation of village-records ; or

(d) sanads, inam, title-deeds and other documents purporting to be or to evidence grants or assignments by Government of land or of any interest in land ;

(e) Omitted.

(2) All such documents and maps shall, for the purposes of sections 48 and 49, be deemed to have been and to be registered in accordance with the provisions of this Act.

91. Subject to such rules and the previous payment of ^{Inspection and copies of such documents.} such fees as ¹[the Government] prescribe in this behalf, all documents and maps mentioned in section 90, clauses (a), (b) and (c) and all registers of the documents mentioned in clause (d), shall be open to the inspection of any person applying to inspect the same, and, subject as aforesaid, copies of such documents shall be given to all persons applying for such copies.

92. Omitted.

93. Omitted.

94. In case of loss of the original document, after its presentation to the Sub-Registrar but before completion of registration proceedings, the copy, taken from the Sub-Registrar's register, may, for purposes of registration be treated as original, and such copy when registered, shall have the effect, as the original document itself.

¹See footnote under section 3.

THE SUCCESSION (PROPERTY PROTECTION) ACT, 1977.**Act No. XXXVI of 1977.****CONTENTS.***Preamble***SECTION.**

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2. Agent etc. may apply on behalf of minor etc.
3. Enquiry made by judge.
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11. Accounts to be filed by curator.
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13. Bar to appoitment of second curator for same property. Curators of different parts of property. Powers to appoint sole curator.
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17. Saving of right to bring regular suit.
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19. Omitted.
20. Omitted.

THE SUCCESSION (PROPERTY PROTECTION) ACT, 1977.**Act No. XXXVI of 1977.**

[Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No. 8372, dated 11th September, 1920, and State Council Resolution No. 1, dated 8th April, 1925. (Notification No.14-L/81).]

An Act for the protection of moveable and immoveable property against wrongful possession in cases of successions.

WHEREAS much inconvenience has been experienced where persons have died possessed of moveable and immoveable property and the same has been taken upon pretended claims of right by gift or succession the difficulty of ascertaining the precise nature of the moveable property in such cases the opportunities for misappropriating such property and also the profits of real property, the delays of a regular suit when vexatiously protracted and the inability of heirs when out of possession to prosecute their rights affording strong temptations for the employment of force or fraud in order to obtain possession.

And WHEREAS from the above causes, the circumstance of actual possession, when taken upon a succession does not afford an indication of rightful title equal to that of a decision by a Judge after hearing all parties in a summary suit though such summary suit may not be sufficient to prevent a party removed from possession thereby from instituting a regular suit;

and WHEREAS such summary suit, though it will take away many of the temptations which exist for assuming wrongful possession upon a succession will be too tardy a remedy for obviating them all especially as regards moveable property;

and WHEREAS it may be expedient, prior to the determination of the summary suit, to appoint a curator to take charge of property upon a succession, where there is reason to apprehend danger of misappropriation, waste or neglect, and where such appointment will, in the opinion of the authority, making the same, be beneficial under all the circumstances of the case;

and WHEREAS it will be very inconvenient to interfere with succession to estates by the appointment of curators, or by summary suits, unless satisfactory grounds for such proceedings shall appear, and unless such proceedings shall be required by or on behalf of parties giving satisfactory proof that they are likely to be materially prejudiced if left to the ordinary remedy of a regular suit:—

1. It is hereby enacted that whenever a person dies leaving property, moveable or immoveable, it shall be lawful for any person claiming a right by succession thereto, or to any portion thereof, to make application to the Judge of the Court of the district where any part of the property is found or situate for relief, either after actual possession has been taken by another person or when forcible means of seizing possession are apprehended.

2. It shall be lawful for any agent, relative or near friend, or for the Court of Wards in cases within their cognizance, in the event of any minor, disqualified or absent person being entitled by succession to such property as aforesaid, to make the like application for relief.

3. The Judge to whom such application shall be made shall, in the first place, enquire by the solemn declaration of the complainant, and by witnesses and documents at his discretion, whether there be strong reasons for believing that the party in possession or taking forcible means for seizing possession has no lawful title, and that the applicant, or the person on whose behalf he applies, is really entitled and is likely to be materially prejudiced if left to the ordinary remedy of a regular suit, and that the application is made *bona fide*.

4. In case the Judge shall be satisfied of the existence of such strong ground of belief, but not otherwise, he shall cite the party complained of, and give notice of vacant or disturbed possession by publication, and after the expiration of a reasonable time shall determine summarily the right to possession (subject to regular suit as hereinafter mentioned) and shall deliver possession accordingly: provided always that the Judge shall have the power to appoint an officer who shall take an inventory of effects, and seal or otherwise secure the same, upon being applied to for the purpose, without delay, whether he shall have concluded the enquiry necessary for citing the party complained of or not.

5. In case it shall further appear upon such application and examination as aforesaid that danger is to be apprehended of the misappropriation or waste of the property before the summary suit can be determined, and that the delay in obtaining security from the party in possession or the insufficiency thereof is likely to expose the party out of possession to considerable risk, provided he be the lawful owner; it shall be lawful

for the Judge to appoint one or more curators with the powers hereinafter next mentioned, whose authority shall continue according to the terms of his or their respective appointments, and in no case beyond the determination of the summary suit and the confirmation or delivery of possession in consequence thereof: provided always that, in the case of land, the Judge may delegate to the Collector or to his officer the powers of a curator, and also that every appointment of a curator in respect of any property be duly published.

6. The Judge shall have power to authorise such curator Powers conferrable on curator. either to take possession of the property generally, or until security be given by the party in possession, or until inventories of the property shall have been made, or for any other purpose necessary for securing the property from misappropriation or waste by the party in possession: provided always that Discretion to allow party in possession to continue. it shall be entirely discretionary with the Judge, whether he shall allow the party in possession to continue in such possession on giving security, or not, and any continuance in possession shall be subject to such orders as the Judge may issue touching inventories, or the securing of deeds or other effects.

7. The Judge shall exact from the curator security for Curator to give security and may receive remuneration. the faithful discharge of his trust, and for rendering satisfactory accounts of the same as hereinafter mentioned, and may authorise him to receive out of the property such remuneration as shall appear reasonable, but in no case exceeding five per centum on the personal property and on the annual profits of the real property. All surplus money realized by the curator shall be Disposal of surplus. paid into Court, and invested in public securities for the benefit of the persons entitled thereto upon adjudication of the summary suit: provided always Curator may be invested with powers before security is taken. that, although security shall be required from the curator with all reasonable despatch and, where it is practicable, shall be taken generally to answer all cases for which the person may be afterwards appointed curator, yet no delay in the taking of security shall prevent the Judge from immediately investing the curator with the powers of his office.

8. Where the estate of the deceased person shall consist wholly or in part of land paying revenue Report from Collector where estate includes revenue paying land. to Government, in all matters regarding the propriety of citing the party in possession, of appointing a curator, and of nominating individuals

to that appointment, the Judge shall demand a report from the Collector, and the Collector is hereby required to furnish the same. In cases of urgency the Judge may proceed, in the first instance, without such report and he shall not be obliged to act in conformity thereto; but, in case of his acting otherwise than according to such report, he shall immediately forward a statement of his reasons to the High Court, and the High Court, if it shall be dissatisfied with such reasons, shall direct the Judge to proceed conformably to the report of the Collector.

9. The curator shall be subject to all orders of the Judge regarding the institution or the defence of suits, and all suits may be instituted or defended in the name of the curator on behalf of the estate: provided that an express authority shall be requisite in the sanad of the curator's appointment for the collection of debts or rents; but such express authority shall enable the curator to give a full acquittance for any sums of money received by virtue thereof.

10. Pending the custody of the property by the curator, it shall be lawful for the Judge to make such allowances to parties having a *prima facie* right thereto as upon a summary investigation of the rights and circumstances of the parties interested he shall consider that necessity may require, taking, at his discretion, security for the repayment thereof with interest, in case the party shall, upon the adjudication of the summary suit, appear not to be entitled thereto.

11. The curator shall file monthly accounts in abstract, and at the period of every three months, it his administration last so long, and upon giving up the possession of the property, file a detailed account of his administration to the satisfaction of the Judge.

12. The accounts of any such curator as is above described shall be open to the inspection of all parties interested; and it shall be competent for any such interested party to appoint a separate person to keep a duplicate account of all receipts and payments by such curator; and if it be found that the accounts of any such curator are in arrear, or if they shall be erroneous or incomplete, or if the curator shall not produce them whenever he shall be ordered to do so by the Judge, he shall be liable to a fine not exceeding one thousand rupees for every such

default.

13. After the Judge of any district shall have appointed any curator, such appointment shall preclude the Judge of any other district from appointing any other curator: provided the first appointment be in respect of the whole of the property of the deceased. But if the appointment be only in respect of a portion of the property of the deceased, this shall not preclude the appointment of another curator in respect of the residue or any portion thereof: provided always that no Judge shall appoint a curator or entertain a summary suit in respect of property which is the subject of a summary suit previously instituted under this Act before another Judge: and provided further that, if two or more curators be appointed by different Judges for several parts of an estate it shall be lawful for the High Court to make such order as it shall think fit for the appointment of one curator of the whole property.

14. This Act shall not be put in force unless the afore-said application to the Judge be made within six months of the decease of the proprietor whose property is claimed by right in succession.

15. This Act shall not be put in force to contravene any public act of settlement; neither in cases in which the deceased proprietor shall have given legal directions for the possession of his property after his decease in the event of minority or otherwise, in opposition to such directions; but in every such case, so soon as the Judge having jurisdiction over the property of a deceased person shall be satisfied of the existence of such directions, he shall give effect thereto.

16. This Act shall not be put in force for the purpose of disturbing the possession of the Court of Wards and in case a minor, or other disqualified person whose property shall be subject to the Court of Wards, shall be the party on whose behalf application is made under this Act, the Judge, if he determines to cite the party in possession and also appoint a curator, shall invest the Court of Wards with the curatorship of the estate pending the suit without taking such security as aforesaid; and in case the minor or other disqualified person shall, upon the adjudication of the summary suit, appear to be entitled to the property, possession shall be delivered to the Court of Wards.

17. Nothing in this Act contained shall be any impediment to the bringing of a regular suit either by the party whose application may have been rejected before or after citing the party in possession, or by the party who may have been evicted from the possession under this Act.

18. The decision of the Judge upon the summary suit under this Act shall have no other effect than that of settling the actual possession; but for this purpose it shall be final, not subject to any appeal or order for review.

19. Omitted.

20. Omitted.

THE SPECIFIC RELIEF ACT, 1977.

ACT NO. XXXVII OF 1977.

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THE SPECIFIC RELIEF ACT, 1977.**ACT NO. XXXVII OF 1977.**

[Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No. 8372, dated 11th September, 1920 and State Council Resolution No. 1, Dated 8th April, 1925. (Notification No. 14-L/81).]

**An Act to define and amend the law relating to
certain kind of Specific Relief.**

WHEREAS it is expedient to define and amend the law
relating to certain kinds of specific relief
obtainable in civil suits ; It is hereby
enacted as follows :—

Preamble.

PART I.**Preliminary.**

¹1 and 2. Omitted.

3. In this Act unless there be something repugnant in
the subject or context,—

Interpretation-clause.

“obligation” includes every duty enforceable by law :

“trust” includes every species of express, implied or
constructive fiduciary ownership :

“trustee” includes every person holding, expressly, by
implication or constructively, a fiduciary character :

Illustrations.

(a) Z bequeaths land to A, “not doubting that he will pay thereout an annuity of Rs. 1,000 to B for his life”. A accepts the bequest. A is a trustee, within the meaning of this Act, for B, to the extent of the annuity.

(b) A is the legal, medical or spiritual adviser of B. By availing himself of his situation as such adviser, A gains some pecuniary advantage which might otherwise have accrued to B. A is a trustee, for B, within the meaning of this Act of such advantage.

(c) A, being B's banker, discloses for his own purpose the state of B's account. A is a trustee, within the meaning of this Act, for B, of the benefit gained by him by means of such disclosure.

(d) A, the mortgagee of certain leaseholds, renews the lease in his own name. A is a trustee, within the meaning of this Act, of the renewed lease, for those interested in the original lease.

¹ Short title, extent and commencement are given and regulated by Act IV of 1977.

(e) A, one of several partners, is employed to purchase goods for the firm. A, unknown to his co-partners, supplies them, at the market-price, with goods previously bought by himself when the price was lower, and thus makes a considerable profit. A is a trustee, for his co-partners, within the meaning of this Act of the profit so made.

(f) A, the manager of B's indigo-factory, becomes agent for C, a vendor of indigo-seed, and receives, without B's assent, commission on the seed purchased from C for the factory. A is a trustee, within the meaning of this Act, for B, of the commission so received.

(g) A buys certain land with notice that B has already contracted to buy it. A is a trustee, within the meaning of this Act, for B, of the land so bought.

(h) A buys land from B, having notice that C is in occupation of the land. A omits to make any inquiry as to the nature of C's interest therein. A is a trustee, within the meaning of this Act for C, to the extent of that interest.

"Settlement" means any instrument (other than a will or codicil as defined by the Probate and Administration Act) whereby the destination or devolution of successive interests in moveable or immoveable property is disposed of or is agreed to be disposed of :

and all words occurring in this Act which are defined in the Contract Act, shall be deemed to have the meanings respectively assigned to them by that Act.

4. Except where it is herein otherwise expressly enacted, nothing in this Act shall be deemed—

(a) to give any right to relief in respect of any agreement which is not a contract ;

(b) to deprive any person of any right to relief, other than specific performance, which he may have under any contract ; or

(c) to affect the operation of the Registration Act on documents.

5. Specific relief is given—

(a) by taking possession of certain property and delivering it to a claimant ;

(b) by ordering a party to do the very act which he is under an obligation to do ;

(c) by preventing a party from doing that which he is under an obligation not to do ;

(d) by determining and declaring the rights of parties otherwise than by an award of compensation ; or

(e) by appointing a receiver.

6. Specific relief granted under clause (c) of section 5 is called preventive relief.

Preventive relief.

7. Specific relief cannot be granted for the mere purpose of enforcing a penal law.
Relief not granted to enforce penal law.

PART II.

Of Specific Relief.

CHAPTER I.

OF RECOVERING POSSESSION OF PROPERTY.

(a) *Possession of Immoveable Property.*

8. A person entitled to the possession of specific immoveable property may recover it in the manner prescribed by the Code of Civil Procedure.
Recovery of specific immoveable property.

9. If any person is dispossessed without his consent of immoveable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.
Suit by person dispossessed of immoveable property.

Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

No suit under this section shall be brought against the Government.

No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

(b) *Possession of Moveable Property.*

10. A person entitled to the possession of specific moveable property may recover the same in the manner prescribed by the Code of Civil Procedure.
Recovery of specific moveable property.

EXPLANATION 1.—A trustee may sue under this section for the possession of property to the beneficial interest in which the person for whom he is trustee is entitled.

EXPLANATION 2.—A special or temporary right to the present possession of property is sufficient to support a suit under this section.

Illustrations.

(a) A bequeaths land to B for his life, with remainder to C. A dies. B enters on the land, but C, without B's consent, obtains possession of the title-deeds. B may recover them from C.

(b) A pledges certain jewels to B to secure a loan. B disposes of them before he is entitled to do so. A without having paid or tendered the amount of the loan, sues B for possession of the jewels. The suit should be dismissed as A is not entitled to their possession, whatever right he may have to secure their safe custody.

(c) A receives a letter addressed to him by B. B gets back the letter without A's consent. A has such a property therein as entitles him to recover it from B.

(d) A deposits books and papers for safe custody with B. B loses them and C finds them, but refuses to deliver them to B when demanded. B may recover them from C, subject to C's right, if any, under section 168 of the Contract Act.

(e) A, a warehouse-keeper, is charged with the delivery of certain goods to Z, which B takes out of A's possession. A may sue B for the goods.

11. Any person having the possession or control of a particular article of moveable property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession, in any of the following cases:—

Liability of person in possession, not as owner, to deliver to person entitled to immediate possession.

(a) when the thing claimed is held by the defendant as the agent or trustee of the claimant;

(b) when compensation in money would not afford the claimant adequate relief for the loss of the thing claimed;

(c) when it would be extremely difficult to ascertain the actual damage caused by its loss;

(d) when the possession of the thing claimed has been wrongfully transferred from the claimant.

Illustrations.

of clause (a)—

A, proceeding to Europe, leaves his furniture in charge of B as his agent during his absence. B, without A's authority, pledges the furniture to C, and C, knowing that B had no right to pledge the furniture, advertises it for sale. C may be compelled to deliver the furniture to A, for he holds it as A's trustee.

of clause (b)—

Z has got possession of an idol belonging to A's family, and of which A is the proper custodian. Z may be compelled to deliver the idol to A.

of clause (c)—

A is entitled to a picture by a dead painter and a pair of rare China vases. B has possession of them. The articles are of too special a character

to bear an ascertainable market-value. B may be compelled to deliver them to A.

CHAPTER II.

OF THE SPECIFIC PERFORMANCE OF CONTRACTS.

(a) Contracts which may be specifically enforced.

12. Except as otherwise provided in this Chapter the ^{Cases in which specific} specific performance of any contract may ^{performance enforceable.} in the discretion of the Court be enforced—

(a) when the act agreed to be done is in the performance, wholly or partly, of a trust ;

(b) when there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done :

(c) when the act agreed to be done is such that pecuniary compensation for its non-performance would not afford adequate relief ; or

(d) when it is probable that pecuniary compensation cannot be got for the non-performance of the act agreed to be done.

EXPLANATION.—Unless and until the contrary is proved the Court shall presume that the breach of a contract to transfer immoveable property cannot be adequately relieved by compensation in money, and that the breach of a contract to transfer moveable property can be thus relieved.

Illustrations.

of clause (a)—omitted.

of clause (b)—

A agrees to buy, and B agrees to sell, a picture by a dead painter and two rare China vases. A may compel B specifically to perform this contract, for there is no standard for ascertaining the actual damage which would be caused by its non-performance

of clause (c)—

A contracts with B to sell him a house for Rs. 1 000. B is entitled to a decree directing A to convey the house to him, he paying the purchase-money.

In consideration of being released from certain obligations imposed on it by its Act of Incorporation, a railway company contracts with Z to make an archway through their railway to connect lands of Z severed by the railway, to construct a road between certain specified points, to pay a certain annual sum towards the maintenance of this road, and also to construct a siding and a

wharf as specified in the contract. Z is entitled to have this contract specifically enforced, for his interest in its performance cannot be adequately compensated for by money; and the Court may appoint a proper person to superintend the construction of the archway, road, siding and wharf.

A contracts to sell, and B contracts to buy, a certain number of railway-shares of a particular description. A refuses to complete the sale. B may compel A specifically to perform this agreement, for the shares are limited in number and not always to be had in the market, and their possession carries with it the status of a shareholder, which cannot otherwise be procured.

A contracts with B to paint a picture for B, who agrees to pay therefor Rs. 1,000. The picture is painted. B is entitled to have it delivered to him on payment or the tender of the Rs. 1,000.

of clause (d)—

A transfers without endorsement, but for valuable consideration, a promissory note to B. A becomes insolvent, and C is appointed his assignee. B may compel C to endorse the note, for C has succeeded to A's liabilities and a decree for pecuniary compensation for not endorsing the note would be fruitless.

13. Notwithstanding anything contained in section 56 of the Contract Act a contract is not wholly impossible of performance because a portion of its subject-matter, existing at its date, has ceased to exist at the time of the performance.

Contracts of which the subject has partially ceased to exist.

Illustrations.

(a) A contracts to sell a house to B for a lakh of rupees. The day after the contract is made, the house is destroyed by a cyclone. B may be compelled to perform his part of the contract by paying the purchase-money.

(b) In consideration of a sum of money payable by B, A contracts to grant an annuity to B for B's life. The day after the contract has been made, B is thrown from his house and killed. B's representative may be compelled to pay the purchase-money.

14. Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed bears only a small proportion to the whole in value and admits of compensation in money, the Court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.

Specific performance of part of contract where part unperformed is small.

Illustrations.

(a) A contracts to sell B a piece of land consisting of 100 bighas. It turns out that 98 bighas of the land belong to A, and the two remaining bighas to a stranger, who refuses to part with them. The two bighas are not necessary for the use or enjoyment of the 98 bighas, nor so important for such use or enjoyment that the loss of them may not be made good in money. A may be directed at the suit of B to convey to B the 98 bighas and to make compensation to him for not conveying the two remaining bighas; or B may be directed, at the

suit of A, to pay to A, on receiving the conveyance and possession of the land, the stipulated purchase-money, less a sum awarded as compensation for the deficiency.

(b) In a contract for the sale and purchase of a house and lands for two lakhs of rupees, it is agreed that part of the furniture should be taken at a valuation. The Court may direct specific performance of the contract notwithstanding the parties are unable to agree as to the valuation of the furniture, and may either have the furniture valued in the suit and include it in the decree for specific performance, or may confine its decree to the house.

15. Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed forms a considerable portion of the whole, or does not admit of compensation in money, he is not entitled to obtain a decree for specific performance. But the Court may, at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, provided that the plaintiff relinquishes all claim to further performance, and all right to compensation either for the deficiency, or for the loss or damage sustained by him through the default of the defendant.

Specific performance of part of contract where part unperformed is large.

Illustrations.

(a) A contracts to sell to B a piece of land consisting of 100 bighas. It turns out that 50 bighas of the land belong to A, and the other 50 bighas to a stranger, who refuses to part with them. A cannot obtain a decree against B for the specific performance of the contract; but if B is willing to pay the price agreed upon and to take the 50 bighas which belong to A, waiving all right to compensation either for the deficiency or for loss sustained by him through A's neglect or default, B is entitled to a decree directing A to convey those 50 bighas to him on payment of the purchase-money.

(b) A contracts to sell to B an estate with a house and garden for a lakh of rupees. The garden is important for the enjoyment of the house. It turns out that A is unable to convey the garden. A cannot obtain a decree against B for the specific performance of the contract, but if B is willing to pay the price agreed upon, and to take the estate and house without the garden, waiving all right to compensation either for the deficiency or for loss sustained by him through A's neglect or default, B is entitled to a decree directing A to convey the house to him on payment of the purchase-money.

16. When a part of contract which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the Court may direct specific performance of the former part.

Specific performance of independent part of contract.

17. The Court shall not direct the specific performance of a part of a contract except in cases coming under one or other of the three last preceding sections.

Bar in other cases of specific performance of part of contract.

18. Where a person contracts to sell or let certain property, having only an imperfect title thereto, the purchaser or lessee (except as otherwise provided by this Chapter) has the following rights:—

Purchaser's rights against vendor with imperfect title.

(a) if the vendor or lessor has subsequently to the sale or lease acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest ;

(b) where the concurrence of other persons is necessary to validate the title, and they are bound to convey at the vendor's or lessor's request, the purchaser or lessee may compel him to procure such concurrence ;

(c) where the vendor professes to sell unencumbered property, but the property is mortgaged for an amount not exceeding the purchase-money, and the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the mortgage and to obtain a conveyance from the mortgagee ;

(d) where the vendor or lessor sues for specific performance of the contract, and the suit is dismissed on the ground of his imperfect title, the defendant has a right to a return of his deposit (if any) with interest thereon, to his costs of the suit, and to a lien for such deposit, interests and costs on the interest of the vendor or lessor in the property agreed to be sold or let.

19. Any person suing for the specific performance of a contract may also ask for compensation for its breach, either in addition to, or in substitution for, such performance.

Power to award compensation in certain cases.

If in any such suit the Court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant and that the plaintiff is entitled to compensation for that breach, it shall award him compensation accordingly.

If in any such suit the Court decides that specific performance ought to be granted, but it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.

Compensation awarded under this section may be assessed in such manner as the Court may direct.

EXPLANATION.—The circumstance that the contract has become incapable of specific performance does not preclude the Court from exercising the jurisdiction conferred by this section.

*Illustrations—**of the second paragraph—*

A contracts to sell a hundred maunds of rice to B. B brings a suit to compel A to perform the contract or to pay compensation. The Court is of opinion that A has made a valid contract and has broken it, without excuse, to the injury of B, but that specific performance is not the proper remedy. It shall award to B such compensation as it deems just.

of the third paragraph—

A contracts with B to sell him a house for Rs. 1,000, the price to be paid and the possession given on the 1st January, 1877. A fails to perform his part of the contract, and B brings his suit for specific performance and compensation, which is decided in his favour on the 1st January, 1878. The decree may, besides ordering specific performance, award to B compensation for any loss which he has sustained by A's refusal

of the Explanation—

A, a purchaser, sues B, his vendor, for specific performance of a contract for the sale of a patent. Before the hearing of the suit the patent expires. The Court may award A compensation for the non-performance of the contract, and may, if necessary, amend the plaint for that purpose.

A sues for the specific performance of a resolution passed by the directors of a public company, under which he was entitled to have a certain number of shares allotted to him, and for compensation for the non-performance of the resolution. All the shares had been allotted before the institution of the suit. The Court may, under this section, award A compensation for the non-performance.

20. A contract, otherwise proper to be specifically enforced, may be thus enforced, though a sum be named in it as the amount to be paid in case of its breach, and the party in default is willing to pay the same.

Liquidation of damages
not a bar to specific performance.

Illustration.

A contracts to grant B an under-lease of property held by A under C, and that he will apply to C for a licence necessary to the validity of the under-lease and that, if the licence is not procured, A will pay B Rs. 10,000. A refuses to apply for the licence and offers to pay B the Rs. 10,000. B is nevertheless entitled to have the contract specifically enforced if C consents to give the licence.

(b) Contracts which cannot be specifically enforced.

21. The following contracts cannot be specifically enforced :—
Contracts not specifically enforceable.

(a) a contract for the non-performance of which compensation in money is an adequate relief ;

(b) a contract which runs into such minute or numerous details, or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the Court cannot enforce specific performance of its material terms ;

(c) a contract the terms of which the Court cannot find with reasonable certainty ;

(d) a contract which is in its nature revocable ;

(e) a contract made by trustees either in excess of their powers or in breach of their trust ;

(f) a contract made by or on behalf of a corporation or public company created for special purposes, or by the promoters of such company, which is in excess of its powers ;

(g) a contract the performance of which involves the performance of a continuous duty extending over a longer period than three years from its date ;

(h) a contract of which a material part of the subject-matter, supposed by both parties to exist, has, before it has been made, ceased to exist.

And, save as provided by the Code of Civil Procedure no contract to refer present or future differences to arbitration shall be specifically enforced.

Illustrations.

to (a)—

A contracts to sell, and B contracts to buy, a lakh of rupees in the four per cent, loan of the Government of India.

A contracts to sell, and B contracts to buy, 40 chests of indigo at Rs. 1,000 per chest.

In consideration of certain property having been transferred by A to B, B contracts to open a credit in A's favour to the extent of Rs. 10,000, and to honour A's drafts to that amount.

The above contracts cannot be specifically enforced, for in the first and second both A and B and in the third A, would be reimbursed by compensation in money.

to (b)—

A contracts to render personal service to B :

A contracts to employ B on personal service :

A, an author, contracts with B, a publisher, to complete a literary work.

B cannot enforce specific performance of these contracts.

A contracts to buy B's business at the amount of a valuation to be made by two valuers, one to be named by A and the other by B. A and B each name a valuer, but before the valuation is made A instructs his valuer not to proceed :

A lets land to B and B contracts to cultivate it in a particular manner for three years next after the date of the lease :

A and B contract that, in consideration of annual advances to be made by A, B will for three years next after the date of the contract grow particular

crops on the land in his possession and deliver them to A when cut and ready for delivery :

A contracts with B that in consideration of Rs. 1,000 to be paid to him by , he will paint a picture for B :

A contracts with B to execute certain works which the Court cannot superintend :

A contracts to supply B with all the goods of a certain class which B may require :

A contracts with B to take from B a lease of a certain house for a specified term, at a specified rent, " if the drawing-room is handsomely decorated " even if it is held to have so much certainty that compensation can be recovered for its breach :

A contracts to marry B :

The above contracts cannot be specifically enforced.

to (c) —

A, the owner of a refreshment-room, contracts with B to give him accommodation there for the sale of his goods and to furnish him with the necessary appliances. A refuses to perform his contract. The case is one for compensation and not for specific performance, the amount and nature of the accommodation and appliances being undefined.

to (d) —

A and B contract to become partners in a certain business, the contract not specifying the duration of the proposed partnership. The contract cannot be specifically performed, for, if it were so performed, either A or B might at once dissolve the partnership.

to (e) —

A is a trustee of land with power to lease it for seven years. He enters into a contract with B to grant a lease of the land for seven years, with a covenant to renew the lease at the expiry of the term. This contract cannot be specifically enforced.

The Directors of a company have power to sell the concern with the sanction of a general meeting of the share-holders.

They contract to sell it without any such sanction. This contract cannot be specifically enforced.

Two trustees, A and B, empowered to sell trust-property worth a lakh of rupees, contract to sell it to C for Rs. 30,000. The contract is so disadvantageous as to be a breach of trust. C cannot enforce its specific performance.

The promoters of a company for working mines contract that the company, when performed, shall purchase certain mineral property. They take no proper precautions to ascertain the value of such property, and in fact agree to pay an extravagant price therefor. They also stipulate that the vendors shall give them a bonus out of the purchase-money. This contract cannot be specifically enforced.

to (f) —

A company existing for the sole purpose of making and working a railway contracts for the purchase of a piece of land for the purpose of erecting a cotton mill thereon. This contract cannot be specifically enforced.

to (g)—

A contracts to let for twenty-one years to B the right to use such part of a certain railway made by A as was upon B's land, and that B should have a right of running carriages over the whole line on certain terms, and might require A to supply the necessary engine power, and that A should during the term keep the whole railway in good repair. Specific performance of this contract must be refused to B.

to (h)—

A contracts to pay an annuity to B for the lives of C and D. It turns out that, at the date of the contract, C though supposed by A and B to be alive, was dead. The contract cannot be specifically performed.

(c) *Of the Discretion of the Court.*

22. The jurisdiction to decree specific performance is discretionary, and the Court is not bound to grant such relief merely because it is lawful to do so ; but the discretion of the Court is not arbitrary but sound and reasonable guided by judicial principles and capable of correction by a Court of Appeal.

The following are cases in which the Court may properly exercise a discretion not to decree specific performance :—

I. Where the circumstances under which the contract is made are such as to give the plaintiff an unfair advantage over the defendant, though there may be no fraud or misrepresentation on the plaintiff's part.

Illustrations.

(a) A, a tenant for life of certain property, assigns his interest therein to B. C contracts to buy, and B contracts to sell, that interest. Before the contract is completed, A receives a mortal injury from the effects of which he dies the day after the contract is executed. If B and C were equally ignorant or equally aware of the fact, B is entitled to specific performance of the contract. If B knew the fact, and C did not, specific performance of the contract should be refused to B.

(b) A contracts to sell to B the interest of C in certain stock-in-trade. It is stipulated that the sale shall stand good, even though it should turn out that C's interest is worth nothing. In fact, the value of C's interest depends on the result of certain partnership-accounts, on which he is heavily in debt to his partners. This indebtedness is known to A, but not to B. Specific performance of the contract should be refused to A.

(c) A contracts to sell, and B contracts to buy, certain land. To protect the land from floods, it is necessary for its owner to maintain an expensive embankment. B does not know of this circumstance, and A conceals it from him. Specific performance of the contract should be refused to A.

(d) A's property is put up to auction. B requests C, A's attorney, to bid for him. C does this inadvertently and in good faith. The persons present, seeing the vendor's attorney bidding, think that he is a mere puffer and cease to compete. The lot is knocked down to B at a low price. Specific performance of the contract should be refused to B.

II. Where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff.

Illustrations.

(e) A is entitled to some land under his father's will on condition that, if he sells it within twenty-five years, half the purchase-money shall go to B. A, forgetting the condition, contracts, before the expiration of the twenty-five years, to sell the land to C. Here, the enforcement of the contract would operate so harshly on A, that the Court will not compel its specific performance in favour of C.

(f) A and B, trustees, join their beneficiary, C, in a contract to sell the trust-estate to D, and personally agree to exonerate the estate from heavy incumbrances to which it is subject. The purchase-money is not nearly enough to discharge those incumbrances, though, at the date of the contract, the vendors believed it to be sufficient. Specific performance of the contract should be refused to D.

(g) A, the owner of an estate, contracts to sell it to B, and stipulates that he, A, shall not be obliged to define its boundary. The estate really comprises a valuable property, not known to either to be part of it. Specific performance of the contract should be refused to B, unless he waives his claim to the unknown property.

(h) A contracts with B to sell him certain land, and to make a road to it from a certain railway-station. It is found afterwards that A cannot make the road without exposing himself to litigation. Specific performance of the part of the contract relating to the road should be refused to B, even though it may be held that he is entitled to specific performance of the rest with compensation for loss of the road.

(i) A, a lessee of mines contracts with B, his lessor, that at any time during the continuance of the lease B may give notice of his desire to take the machinery and plant used in and about the mines, and that he shall have the articles specified in his notice delivered to him at a valuation on the expiry of the lease. Such a contract might be most injurious to the lessee's business, and specific performance of it should be refused to B.

(j) A contracts to buy certain land from B. The contract is silent as to access to the land. No right of way to it can be shown to exist. Specific performance of the contract should be refused to B.

(k) A contracts with B to buy from B's manufactory and not elsewhere all the goods of a certain class used by A in his trade. The Court cannot compel B to supply the goods, but if he does not supply them A may be ruined, unless he is allowed to buy them elsewhere. Specific performance of the contract should be refused to B.

The following is a case in which the Court may properly exercise a discretion to decree specific performance:—

III. Where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

Illustration.

A sells land to a railway-company, who contract to execute certain works for his convenience. The company take the land and use it for their railway.

Specific performance of the contract to execute the works should be decreed in favour of A.

(d) For whom Contracts may be specifically enforced.

23. Except as otherwise provided by this Chapter, the specific performance of a contract may be obtained by—
Who may obtain specific performance.

- (a) any party thereto ;
- (b) the representative in interest, or the principal of any party thereto : provided that, where the learning, skill, solvency or any personal quality of such party is a material ingredient in the contract or where the contract provides that his interest shall not be assigned, his representative in interest or his principal shall not be entitled to specific performance of the contract, unless where his part thereof has already been performed ;
- (c) where the contract is a settlement on marriage, or a compromise of doubtful rights between members of the same family, any person beneficially entitled thereunder ;
- (d) where the contract has been entered into by a tenant for life in due exercise of a power, the remainder man ;
- (e) a reversioner in possession, where the agreement is a covenant entered into with his predecessor in title and the reversioner is entitled to the benefit of such covenant ;
- (f) a reversioner in remainder, where the agreement is such a covenant, and the reversioner is entitled to the benefit thereof and will sustain material injury by reason of its breach ;
- (g) when a public company has entered into a contract and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation ;
- (h) when the promoters of a public company have, before its incorporation, entered into a contract for the purposes of the company, and such contract is warranted by the terms of incorporation, the company.

(e) For whom Contracts cannot be specifically enforced.

24. Specific performance of a contract cannot be enforced in favour of a person—

Personal bar to the relief.

- (a) who could not recover compensation for its breach ;
- (b) who has become incapable of performing, or violates, any essential term of the contract that on his part remains to be performed ;
- (c) who has already chosen his remedy and obtained satisfaction for the alleged breach of contract ; or

(d) who previously to the contract, had notice that a settlement on the subject-matter thereof (though not founded of any valuable consideration) had been made and was then in force.

Illustrations—

to clause (a)—

A, in the character of agent for B, enters into an agreement with C to buy C's house. A is in reality acting not as agent for B but on his own account. A cannot enforce specific performance of this contract.

to clause (b)—

A contracts to sell B a house and become tenant thereof for a term of fourteen years from the date of the sale at a specified yearly rent. A becomes insolvent. Neither he nor his assignee can enforce specific performance of the contract.

A contracts to sell B a house and garden in which there are ornamental trees, a material element in the value of the property as a residence. A, without B's consent, fells the trees. A cannot enforce specific performance of the contract.

A, holding land under a contract with B for a lease, commits waste, or treats the land in an unhusbandlike manner. A cannot enforce specific performance of the contract.

A contracts to let, and B contracts to take, an unfinished house, B contracting to finish the house and the lease to contain covenants on the part of A to keep the house in repair. B finishes the house in a very defective manner: he cannot enforce the contract specifically, though A and B may sue each other for compensation for breach of it.

to clause (c)—

A contracts to let, and B contracts to take, a house for a specified term at a specified rent. B refuses to perform the contract. A thereupon sues for, and obtains, compensation for the breach. A cannot obtain specific performance of the contract.

25. A contract for the sale or letting of property, whether moveable or immoveable, cannot be specifically enforced in favour of a vendor or lessor—

Contracts to sell property by one who has no title, or who is a voluntary settlor.

(a) who, knowing himself not to have any title to the property, has contracted to sell or let the same ;

(b) who, though he entered into the contract believing that he had a good title to the property, cannot, at the time fixed by the parties or by the Court for the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt ;

(c) who, previous to entering into the contract, has made a settlement (though not founded on any valuable consideration) or the subject-matter of the contract.

Illustrations.

(a) A, without C's authority, contracts to sell to B an estate which A knows to belong to C. A cannot enforce specific performance of this contract, even though C is willing to confirm it.

(b) A bequeaths his land to trustees, declaring that they may sell it with the consent in writing of B. B gives a general prospective assent in writing to any sale which the trustees may make. The trustees then enter into a contract with C to sell him the land. C refuses to carry out the contract. The trustees cannot specifically enforce this contract, as, in the absence of B's consent to the particular sale to C, the title which they can give C is, as the law stands, not free from reasonable doubt.

(c) A, being in possession of certain land, contracts to sell it to Z. On enquiry it turns out that A claims the land as heir of B, who left the country several years before, and is generally believed to be dead, but of whose death there is no sufficient proof. A cannot compel Z specifically to perform the contract.

(d) A, out of natural love and affection, makes a settlement of certain property on his brothers and their issue, and afterwards enters into a contract to sell the property to a stranger. A cannot enforce specific performance of this contract so as to override the settlement and thus prejudice the interests of the persons claiming under it.

(f) For whom Contracts cannot be specifically enforced, except with a Variation.

26. Where a plaintiff seeks specific performance of a contract in writing, to which the defendant sets up a variation, the plaintiff cannot obtain the performance sought, except with the variation so set up, in the following cases (namely):—

(a) where by fraud or mistake of fact the contract of which performance is sought is in terms different from that which the defendant supposed it to be when he entered into it;

(b) where by fraud, mistake of fact, or surprise the defendant entered into the contract under a reasonable misapprehension as to its effect as between himself and the plaintiff;

(c) where the defendant, knowing the terms of the contract and understanding its effect, has entered into it relying upon some misrepresentation by the plaintiff, or upon some stipulation on the plaintiff's part which adds to the contract, but which he refuses to fulfil;

(d) where the object of the parties was to produce a certain legal result, which the contract as framed is not calculated to produce;

(e) where the parties have, subsequently to the execution of the contract, contracted to vary it.

Illustrations.

(a) A, B and C sign a writing by which they purport to contract each to enter into a bond to D for Rs. 1,000. In a suit by D, to make A, B and C separately liable each to the extent of Rs. 1,000, they prove that the word "each" was inserted by mistake; that the intention was that they should give a joint bond for Rs. 1,000. D can obtain the performance sought only with the variation thus set up.

(b) A sues B to compel specific performance of a contract in writing to buy a dwelling-house. B proves that he assumed that the contract included an adjoining yard, and the contract was so framed as to leave it doubtful whether the yard was so included or not. The Court will refuse to enforce the contract, except with the variation set up by B.

(c) A contracts in writing to let to B a wharf, together with a strip of A's land delineated in a map. Before signing the contract, B proposed orally that he should be at liberty to substitute for the strip mentioned in the contract another strip of A's land of the same dimensions, and to this A expressly assented. B then signed the written contract. A cannot obtain specific performance, of the written contract, except with the variation set up by B.

(d) A and B enter into negotiations for the purpose of securing land to B for his life, with remainder to his issue. They execute a contract the terms of which are found to confer an absolute ownership on B. The contract so framed cannot be specifically enforced.

(e) A contracts in writing to let a house to B, for a certain term, at the rent of Rs. 100 per month, putting it first into tenantable repair. The house turns out to be not worth repairing, so, with B's consent, A pulls it down and erects a new house in its place; B contracting orally to pay rent at Rs. 120 per mensem. B then sues to enforce specific performance of the contract in writing. He cannot enforce it except with the variations made by the subsequent oral contract.

(g) Against whom Contracts may be specifically enforced.

27. Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against—

Relief against parties
and persons claiming under
them by subsequent title.

(a) either party thereto;

(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;

(c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;

(d) when a public company has entered into a contract and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation;

(e) when the promoters of a public company have, before its incorporation, entered into a contract, the company:

provided that the company has ratified and adopted the contract and the contract is warranted by the terms of the incorporation.

Illustrations—

to clause (b)—

A contracts to convey certain land to B by a particular day. A dies intestate before that day without having conveyed the land. B may compel A's heir or other representative in interest to perform the contract specifically.

A contracts to sell certain land to B for Rs 5,000. A afterwards conveys the land for Rs. 6,000 to C, who has notice of the original contract. B may enforce specific performance of the contract as against C.

A contracts to sell land to B for Rs. 5,000. B takes possession of the land. Afterwards A sells it to C for Rs. 6,000. C makes no inquiry of B relating to his interest in the land. B's possession is sufficient to affect C with notice of his interest, and he may enforce specific performance of the contract against C.

A contracts, in consideration of Rs 1,000, to bequeath certain of his land to B. Immediately after the contract A dies intestate, and C takes out administration to his estate. B may enforce specific performance of the contract against C.

A contracts to sell certain land to B. Before the completion of the contract, A becomes a lunatic and C is appointed his committee. B may specifically enforce the contract against C.

to clause (c)—

A, the tenant for life of an estate, with remainder to B, in due exercise of a power conferred by the settlement under which he is tenant for life, contracts to sell the estate to C, who has notice of the settlement. Before the sale is completed A dies. C may enforce specific performance of the contract against B.

A and B are joint tenants of land, his undivided moiety of which either may alien in his life-time, but which, subject to that right, devolves on the survivor. A contracts to sell his moiety to C and dies. C may enforce specific performance of the contract against B.

(h) Against whom Contracts cannot be specifically enforced.

28. Specific performance of a contract cannot be enforced

What parties cannot be compelled to perform. against a party thereto in any of the following cases :—

(a) if the consideration to be received by him is so grossly inadequate, with reference to the state of things existing at the date of the contract, as to be either by itself or coupled with other circumstances evidence of fraud or of undue advantage taken by the plaintiff ;

(b) if his assent was obtained by the misrepresentation (whether wilful or innocent), concealment, circumvention or unfair practices, of any party to whom performance would

become due under the contract, or by any promise of such party which has not been substantially fulfilled ;

(c) if his assent was given under the influence of mistake of fact, misapprehension or surprise : provided that, when the contract provides for compensation in case of mistake, compensation may be made for a mistake within the scope of such provision, and the contract may be specifically enforced in other respects if proper to be so enforced.

Illustrations—

to clause (c)—

A, one of two executors, in the erroneous belief that he had the authority of his co-executor, enters into an agreement for the sale to B of his testator's property. B cannot insist on the sale being completed.

A directs an auctioneer to sell certain land. A afterwards revokes the auctioneer's authority as to 20 bighas of this land, but the auctioneer inadvertently sells the whole to B, who has not notice of the revocation. B cannot enforce specific performance of the agreement.

(i) The effect of dismissing a suit for Specific Performance.

29. The dismissal of a suit for specific performance of a contract or part thereof shall bar the plaintiff's right to sue for compensation for the breach of such contract or part, as the case may be.

Bar of suit for breach after dismissal.

(j) Awards and directions to execute Settlements.

30. The provisions of this Chapter as to contracts shall, *mutatis mutandis*, apply to awards and to directions in a will or codicil to execute a particular settlement.

Application of preceding sections to awards and testamentary directions to execute settlements.

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CHAPTER III.

OF THE RECTIFICATION OF INSTRUMENTS.

31. When, through fraud or a mutual mistake of the parties, a contract or other instrument in writing does not truly express their intention, either party, or his representative in interest, may institute a suit to have the instrument rectified ; and if the

When instrument may be rectified.

Court find it clearly proved that there has been fraud or mistake in framing the instrument, and ascertain the real intention of the parties in executing the same, the Court may in its discretion rectify the instrument so as to express that intention, so far as this can be done without prejudice to rights acquired by third persons in good faith and for value.

Illustrations.

(a) A, intending to sell to B his house and one of three godowns adjacent to it, executes a conveyance prepared by B, in which, through B's fraud, all three godowns are included. Of the two godowns which were fraudulently included, B gives one to C and lets the other to D for a rent, neither C nor D having any knowledge of the fraud. The conveyance may, as against B and C, be rectified so as to exclude from it the godown given to C; but it cannot be rectified so as to affect D's lease.

(b) By a marriage settlement, A, the father of B, the intended wife, covenants with C, the intended husband, to pay to C, his executors, administrators and assigns, during A's life, an annuity of Rs. 5,000. C dies insolvent and the official assignee claims the annuity from A. The Court, on finding it clearly proved that the parties always intended that this annuity should be paid as a provision for B and her children, may rectify the settlement and decree that the assignee has no right to any part of the annuity.

32. For the purpose of rectifying a contract in writing, Presumption as to intent of parties. the Court must be satisfied that all the parties thereof intended to make an equitable and conscientious agreement.

33. In rectifying written instrument the Court may Principles of rectification. inquire what the instrument was intended to mean, and what were intended to be its legal consequences, and is not confined to the enquiry what the language of the instrument was intended to be.

34. A contract in writing may be first rectified and then Specific enforcement of rectified contract. if the plaintiff has so prayed in his plaint and the Court thinks fit, specifically enforced.

Illustration.

A contracts in writing to pay his attorney, B, a fixed sum in lieu of costs. The contract contains mistakes as to the name and rights of the client, which, if construed strictly, would exclude B from all rights under it. B is entitled, if the Court thinks fit, to have it rectified, and to an order for payment of the sum, as if at the time of its execution it had expressed the intention of the parties.

CHAPTER IV.

OF THE RESCISSION OF CONTRACTS.

35. Any person interested in a contract may sue to have it rescinded, and such rescission may be adjudged by the Court in any of the following cases, namely :—

(a) where the contract is voidable or terminable by the plaintiff ;

(b) where the contract is unlawful for causes not apparent on its face, and the defendant is more to blame than the plaintiff ;

(c) where a decree for specific performance of a contract of sale, or of a contract to take a lease, has been made, and the purchaser or lessee makes default in payment of the purchase-money or other sums which the Court has ordered him to pay.

When the purchaser or lessee is in possession of the subject-matter, and the Court finds that such possession is wrongful, the Court may also order him to pay to the vendor or lessor the rents and profits, if any, received by him as such possessor.

In the same case, the Court may, by order in the suit in which the decree has been made and not complied with, rescind the contract, either so far as regards the party in default, or altogether, as the justice of the case may require.

Illustrations.—

to (a)—

A sells a field to B. There is a right of way over the field of which A has direct personal knowledge, but which he conceals from B. B is entitled to have the contract rescinded.

to (b)—

A, an attorney, induces his client B, a Hindu widow, to transfer property to him for the purpose of defrauding B's creditors. Here the parties are not equally in fault, and B is entitled to have the instrument of transfer rescinded.

36. Rescission of contract cannot be adjudged for mere mistake, unless the party against whom it is adjudged can be restored to substantially the same position as if the contract had not been made.

37. A plaintiff instituting a suit for the specific performance of a contract in writing may pray in the alternative that if the contract cannot be specifically enforced, it may be

Alternative prayer for rescission in suit for specific performance.

rescinded and delivered up to be cancelled ; and the Court, if it refuses to enforce the contract specifically, may direct it to be rescinded and delivered up accordingly.

38. On adjudging the rescission of a contract, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

CHAPTER V.

OF THE CANCELLATION OF INSTRUMENTS.

39. Any person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable ; and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

If the instrument has been registered under the Registration Act, the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered ; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.

Illustrations.

(a) A, the owner of a ship, by fraudulently representing her to be seaworthy, induces B, an underwriter, to insure her. B may obtain the cancellation of the policy.

(b) A conveys land to B, who bequeaths it to C and dies. Thereupon D gets possession of the land and produces a forged instrument stating that the conveyance was made to B in trust for him. C may obtain the cancellation of the forged instrument.

(c) A, representing that the tenants on his land were all at will, sells it to B, and conveys it to him by an instrument, dated the 1st January 1877. Soon after the day, A fraudulently grants to C a lease of part of the lands, dated the 1st October, 1876, and procures the lease to be registered under the Registration Act. B may obtain the cancellation of this lease.

(d) A agrees to sell and deliver a ship to B, to be paid for by B's acceptances of four bills of exchange, for sums amounting to Rs. 30,000, to be drawn by A on B. The bills are drawn and accepted, but the ship is not delivered according to the agreement. A sues B on one of the bills. B may obtain the cancellation of all the bills.

40. Where an instrument is evidence of different rights or different obligations, the Court may, in a proper case, cancel it in part and allow it to stand for the residue.

Illustration.

A draws a bill on B, who endorses it to C, by whom it appears to be endorsed to D, who endorses it to E. C's endorsement is forged. C is entitled to have such endorsement cancelled, leaving the bill to stand in other respects.

41. On adjudging the cancellation of an instrument, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

Power to require party for whom instrument is cancelled to make compensation.

CHAPTER VI.

OF DECLARATORY DECREES.

42. Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief;

Discretion of Court as to declaration of status or right.

Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title omits to do so.

Bar to such declaration.

EXPLANATION—A trustee of property is a “person interested to deny” a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.

Illustrations.

(a) A is lawfully in possession of certain land. The inhabitants of a neighbouring village claim a right of way across the land. A may sue for a declaration that they are not entitled to the right so claimed.

(b) A bequeaths his property to B, C and D, “to be equally divided amongst all and each of them, if living at the time of my death, then amongst their surviving children”. No such children are in existence. In a suit against A's executor, the Court may declare whether B, C, and D took the property absolutely, or only for their lives, and it may also declare the interest of the children before their rights are vested.

(c) A covenants that, if he should at any time be entitled to property exceeding one lakh of rupees, he will settle it upon certain trusts. Before any such property accrues, or any persons entitled under the trusts are ascertained, he institutes a suit to obtain a declaration that the covenant is void for uncertainty. The Court may make the declaration.

(d) A alienates to B property in which A has merely a life interest. The alienation is invalid as against C, who is entitled as reversioner. The Court may in a suit by C against A and B declare that C is so entitled.

(e) The widow of a sonless Hindu alienates part of the property of which she is in possession as such. The person presumptively entitled to possess the property if he survive her may, in a suit against the alienee, obtain a declaration that the alienation was made without legal necessity and was therefore void beyond the widow's lifetime.

(f) A Hindu widow in possession of property adopts a son to her deceased husband. The person presumptively entitled to possession of the property on her death without a son, may in a suit against the adopted son, obtain a declaration that the adoption was invalid.

(g) A is in possession of certain property, B alleging that he is the owner of the property, requires A to deliver it to him. A may obtain a declaration of his right to hold the property.

(h) A bequeaths property to B for his life, with remainder to B's wife and her children, if any, by B, but, if B die without any wife or children, to C. B has a putative wife, D, and children, but C denies that B and D were ever lawfully married. D and her children may in B's lifetime, institute a suit against C and obtain therein a declaration that they are truly the wife and children of B.

43. A declaration made under this Chapter is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the person for whom, if in existence at the date of the declaration, such parties would be trustees.

Illustration.

A, a Hindu, in a suit to which B his alleged wife, and her mother, are defendants, seeks a declaration that his marriage was duly solemnized and an order for the restitution of his conjugal rights. The Court makes the declaration and order. C, claiming that B is his wife, then sues A for the recovery of B. The declaration made in the former suit is not binding upon C.

CHAPTER VII.

OF THE APPOINTMENT OF RECEIVERS.

44. The appointment of a receiver pending a suit is a matter resting in the discretion of the Court.

Appointment of receivers discretionary.

The mode and effect of his appointment, and his rights, powers, duties and liabilities, are regulated by the Code of Civil Procedure.

Reference to Code of Civil Procedure.

CHAPTER VIII.

OF THE ENFORCEMENT OF PUBLIC DUTIES.

45 to 51. Omitted.

PART III.**Of Preventive Relief.****CHAPTER IX.****OF INJUNCTIONS GENERALLY.**

52. Preventive relief is granted at the discretion of the Court by injunction, temporary or perpetual.
Preventive relief how granted.

53. Temporary injunctions are such as are to continue until a specified time, or until the further order of the Court. they may be granted at any period of a suit, and are regulated by the Code of Civil Procedure.
Temporary injunctions

A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit: the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.
Perpetual injunctions.

CHAPTER X.**OF PERPETUAL INJUNCTIONS.**

54. Subject to the other provisions contained in, or referred to by, this Chapter, a perpetual injunction may be granted to prevent the breach of an obligation existing in favour of the applicant, whether expressly or by implication.
Perpetual injunctions when granted.

When such obligation arises from contract, the Court shall be guided by the rules and provisions contained in Chapter II of this Act

When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the Court may grant a perpetual injunction in the following cases(namely):—

(a) where the defendant is trustee of the property for the plaintiff;

(b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;

(c) where the invasion is such that pecuniary compensation would not afford adequate relief;

(d) where it is probable that pecuniary compensation cannot be got for the invasion;

(e) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

EXPLANATION.—For the purpose of this section a trade-mark is property.

Illustrations.

(a) A lets certain land to B, and B contracts not to dig sand or gravel thereout. A may sue for an injunction to restrain B from digging in violation of his contract.

(b) A trustee threatens a breach of trust. His co-trustees, if any, should, and the beneficial owners may, sue for an injunction to prevent the breach.

(c) The directors of a public company are about to pay a dividend out of capital or borrowed money. Any of the shareholders may sue for an injunction to restrain them.

(d) The directors of a fire and life insurance company are about to engage in marine insurances. Any of the shareholders may sue for an injunction to restrain them.

(e) A, an executor, through misconduct or insolvency, is bringing the property of the deceased into danger. The court may grant an injunction to restrain him from getting in the assets.

(f) A, a trustee for B, is about to make an imprudent sale of a small part of the trust property. B may sue for an injunction to restrain the sale, even though compensation in money would have afforded him adequate relief.

(g) A makes a settlement (not founded on marriage or other valuable consideration) of an estate on B and his children. A then contracts to sell the estate C. B or any of his children may sue for an injunction to restrain the sale.

(h) In the course of A's employment as a vakil, certain papers belonging to his client, B, come into his possession. A threatens to make these papers public, or to communicate their contents to a stranger. B may sue for an injunction to restrain A from so doing.

(i) A is B's medical adviser. He demands money of B which B declines to pay. A then threatens to make known the effect of B's communications to him as a patient. This is contrary to A's duty, and B may sue for an injunction to restrain him from so doing.

(j) A, the owner of two adjoining houses, lets one to B and afterwards lets the other to C. A and C begin to make such alterations in the house let to C as will prevent the comfortable enjoyment of the house let to B. B may sue for an injunction to restrain them from so doing.

(k) A lets certain arable land to B for purposes of husbandry but without any express contract as to the mode of cultivation. Contrary to the mode of cultivation customary in the district, B threatens to sow the lands with seeds injurious thereto and requiring many years to eradicate. A may sue for an injunction to restrain B from sowing the land in contravention of his implied contract to use them in a husband-like manner.

(l) A, B and C are partners, the partnership being determinable at will. A threatens to do an act tending to the destruction of the partnership property. B and C may, without seeking a dissolution of the partnership, sue for an injunction to restrain A from doing the act.

(m) A, a Hindu widow in possession of her deceased husband's property, commits destruction of the property without any cause sufficient to justify her in so doing. The heir-expectant may sue for an injunction to restrain her.

(n) A, B and C are members of an undivided Hindu family. A cuts timber growing on the family-property, and threatens to destroy part of the family-house and to sell some of the family-utensils. B and C may sue for an injunction to restrain him.

(o) A, the owner of certain houses in Srinagar, becomes insolvent. B buys them from the Official Assignee and enters into possession. A persists in trespassing on and damaging the houses, and B is thereby compelled, at considerable expense, to employ men to protect the possession. B may sue for an injunction to restrain further acts of trespass.

(p) The inhabitants of a village claim a right of way over A's land. In a suit against several of them, A obtains a declaratory decree that his land is subject to no such right. Afterwards each of the other villagers sues A for obstructing his alleged right of way over the land. A may sue for an injunction to restrain them.

(q) A, in an administration-suit to which a creditor, B, is not a party, obtains a decree for the administration of C's assets. B proceeds against C's estate for his debt. A may sue for an injunction to restrain B.

(r) A and B are in possession of contiguous lands and of the mines underneath them. A works his mine so as to extend under B's mine and threatens to remove certain pillars which help to support B's mine. B may sue for an injunction to restrain him from so doing.

(s) A rings bells or makes some other unnecessary noise so near a house as to interfere materially and unreasonably with the physical comfort of the occupier, B. B may sue for an injunction restraining A from making the noise.

(t) A pollutes the air with smoke so as to interfere materially with the physical comfort of B and C, who carry on business in a neighbouring house. B and C may sue for an injunction to restrain the pollution.

(u) A infringes B's patent. If the Court is satisfied that the patent is valid and has been infringed, B may obtain an injunction to restrain the infringement.

(v) A pirates B's copyright. B may obtain an injunction to restrain the piracy, unless the work of which copyright is claimed is libellous or obscene.

(w) A improperly sues the trade-mark of B. B may obtain an injunction to restrain the user, provided that B's use of the trade-mark is honest.

(x) A, a tradesman, holds out B as his partner against the wish and without the authority of B. B may sue for an injunction to restrain A from so doing.

(y) A, a very eminent man, writes letters on family topics to B. After the death of A and B, C, who is B's residuary legatee, proposes to make money by publishing A's letters. D, who is A's executor, has a property in the letters, and may sue for an injunction to restrain C from publishing them.

(z) A carries on a manufactory and B is his assistant. In the course of his business, A imparts to B a secret process of value. B afterwards demands money of A, threatening, in case of refusal, to disclose the process to C, a rival manufacturer. A may sue for an injunction to restrain B from disclosing the process.

55. When to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the Court is capable of enforcing, the Court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

Illustrations.

(a) A, by new buildings, obstructs lights to the access and use of which B has acquired a right under the Limitation Act, Part IV. B may obtain an injunction, not only to restrain A from going on with the buildings, but also to pull down so much of them as obstructs B's lights.

(b) A builds a house with eaves projecting over B's land. B may sue for an injunction to pull down so much of the eaves as so project.

(c) In the case put as illustration (i) to section 54, the Court may also order all written communications made by B, as patient, to A, as medical adviser, to be destroyed.

(d) In the case put as illustration (y) to section 54, the Court may also order A's letters to be destroyed.

(e) A threatens to publish statements concerning B which would be punishable under Chapter XXI of the ¹Ranbir Daud Bichi. The Court may grant an injunction to restrain the publication, even though it may be shown not to be injurious to B's property.

(f) A, being B's medical adviser, threatens to publish B's written communications with him, showing that B has led an immoral life. B may obtain an injunction to restrain the publication.

(g) In the cases put as illustrations (v) and (w) to section 54, and as illustrations (e) and (f) to this section, the Court may also order the copies produced by piracy, and the trade-marks, statements and communications, therein respectively mentioned, to be given up or destroyed.

56. An injunction cannot be granted—
Injunction when refused.

(a) to stay a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;

(b) to stay proceedings in a Court not subordinate to that from which the injunction is sought;

(c) to restrain persons from applying to any legislative body;

(d) to interfere with the public duties of any department of the Government of India or the local Government of a province of British India or the State, or with the sovereign acts of a Foreign Government;

(e) to stay proceedings in any criminal matter;

(f) to prevent the breach of a contract, the performance of which would not be specifically enforced;

(g) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;

(h) to prevent a continuing breach in which the applicant has acquiesced;

(i) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding, except in case of breach of trust;

(j) when the conduct of the applicant or his agents has been such as disentitle him to the assistance of the Court;

(k) where the applicant has no personal interest in the matter.

Illustrations.

(a) A seeks an injunction to restrain his partner, B from receiving the partnership-debts and effects. It appears that A had improperly possessed

¹Ranbir Penal Code.

himself of the books of the firm and refused B access to them. The Court will refuse the injunction.

(b) A manufactures and sells crucibles, designating them as patent "plumbago crucibles," though in fact they have never been patented. B pirates the designation. A cannot obtain an injunction to restrain the piracy.

(c) A sells an article called "Mexican Balm" stating that it is compounded of divers rare essence, and has sovereign medicinal qualities. B commences to sell a similar article to which he gives a name and description such as to lead people into the belief that they are buying A's Mexican Balm. A sues B for an injunction to restrain the sale. B shows that A's Mexican Balm consists of nothing but scented hog's lard. A's use of his description is not an honest one and he cannot obtain an injunction.

57. Notwithstanding section 56, clause (f) where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstance that the Court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement: provided that the applicant has not failed to perform the contract so far as it is binding on him.

Illustrations.

(a) A contracts to sell to B for Rs. 1,000 the good will of a certain business unconnected with business-premises, and further agrees not to carry on that business in Srinagar. B pays A the Rs. 1,000 but A carries on the business in Srinagar. The Court cannot compel A to send his customers to B, but B may obtain an injunction restraining A from carrying on the business in Srinagar.

(b) A contracts to sell to B the good-will of a business. A then sets up a similar business close by B's shop, and solicits his old customers to deal with him. This is contrary to his implied contract and B may obtain an injunction to restrain A from soliciting the customers, and from doing any act whereby their good-will may be withdrawn from B.

(c) A contracts with B to sing for twelve months at B's theatre and not to sing in public elsewhere. B cannot obtain specific performance of the contract to sing, but he is entitled to an injunction restraining A from singing at any other place of public entertainment.

(d) B contracts with A that he will serve him faithfully for twelve months as a clerk. A is not entitled to a decree for specific performance of this contract. But he is entitled to an injunction restraining B from serving a rival house as clerk.

(e) A contracts with B that in consideration of Rs. 1,000 to be paid to him by B on a day fixed he will not set up a certain business within a specified distance. B fails to pay the money. A cannot be restrained from carrying on the business within the specified distance.

THE SUITS VALUATION ACT, 1977.**Act No. XXXVIII of 1977.****CONTENTS.***Preamble.***SECTION.**

1. Omitted.

— — —

PART I.**SUITS RELATING TO LAND.**

2. Omitted.

3. Power of High Court to make rules; determining value of land for jurisdictional purposes.

4. Valuation of relief in certain suits relating to land not to exceed the value of the land.

5. Enforcement of rules.

6. Omitted.

— — —

PART II.**OTHER SUITS.**

7. Omitted.

SECTION.

8. Court-fee value and jurisdictional value to be the same in certain suits.

9. Determination of value of certain suits by High Court.

10. Omitted.

PART III.**SUPPLEMENTAL PROVISIONS.**

11. Procedure where objection is taken on appeal or revision that a suit or appeal was not properly valued for jurisdictional purposes.

12. Omitted.

THE SUITS VALUATION ACT, 1977.**Act No. XXXVIII of 1977.**

[Sanctioned by Highness the Maharaja Sirih Bihadur per Chief Minister's endorsement No. 8372, dated 11th September, 1920 and State Council Resolution No. 1, dated 8th April, 1925. (Notification No. 14-L/81).]

An Act to prescribe the mode of valuing certain suit for the purpose of determining the jurisdiction of Courts with respect thereto.

WHEREAS it is expedient to prescribe the mode of valuing certain suits for the purpose of determining the jurisdiction of Courts with respect thereto ; it is hereby enacted as follows :—

¹1. Omitted.

PART I.**SUITS RELATING TO LAND.**

2. Omitted.

3. (1) The High Court may, with the previous sanction of ²[the Government], make rules for determining the value of land for purposes of jurisdiction in the suits mentioned in the Court-fees Act section 7, paragraphs v and vi, and paragraph x, clause (d).

Power for High Court to make rules determining value of land for jurisdictional purposes.

(2) The rules may determine the value of any class of land, or of any interest in land, in the whole or any part of a local area, and may prescribe different values for different places within the same local area.

4. Where a suit mentioned in the Court-fees Act, section 7, paragraph iv, or Schedule II, article 17, relates to land or an interest in land of which the value has been determined by rules under the last foregoing section, the amount at which for purposes of jurisdiction the relief sought in the suit is valued shall not exceed the value of the land or interest as determined by those rules.

Valuation of relief in certain suits relating to land not to exceed the value of the land.

¹Short title, extent and commencement are given and regulated by Act IV of 1977.

²Substituted for "His Highness" vide Act X of 1996 published in Government Gazette dated 15th Bhaden 1996

Enforcement of rules

5. (1) Omitted.

(2) A rule under section 3 shall not take effect till the expiration of one month after the rule has been published in the Jammu and Kashmir Government Gazette.

6. Omitted.

PART II.

OTHER SUITS.

7. Omitted.

8. Wherein suits other than those referred to in the Court-fees Act, section 7, paragraphs v, vi and ix, and paragraph x clause (d), ^{Court-fee value and jurisdictional value to be the same in certain suits.} court-fees are payable *ad valorem* under the Court-fees Act, the value as determinable for the computation of court-fees and the value for purposes of jurisdiction shall be the same.

9. When the subject-matter of suits of any class, other than suits mentioned in the Court-fees Act section 7, paragraphs v and vi and paragraph x, clause (d), is such that ^{Determination of value of certain suits by High Court.} in the opinion of the High Court it does not admit of being satisfactorily valued, the High Court may, with the previous sanction of ¹[the Government] direct that suits of that class shall, for the purposes of the Court-fees Act and of this Act and any other enactment for the time being in force, be treated as if their subject-matter were of such value as the High Court thinks fit to specify in this behalf.

10. Omitted.

PART III.

SUPPLEMENTAL PROVISIONS.

11. (1) Notwithstanding anything in section 99 of the Code of Civil Procedure, an objection that ^{Procedure where objection is taken on appeal or revision that a suit or appeal was not properly valued for jurisdictional purposes.} by reason of the over-valuation or under-valuation of a suit or appeal a Court of first instance or lower appellate Court which had not jurisdiction with respect to the

¹Substituted for the words "His Highness" Notification Act X of 1996, published in Government Gazette dated 15th Bhadon 1996.

suit or appeal exercised jurisdiction with respect thereto shall not be entertained by an appellate Court, unless—

(a) the objection was taken in the Court of first instance at or before the hearing at which issues were first framed and recorded, or in the lower appellate Court in the memorandum of appeal to that Court, or

(b) the appellate Court is satisfied, for reasons to be recorded by it in writing, that the suit or appeal was over-valued or under-valued, and that the over-valuation or under-valuation thereof has prejudicially affected the disposal of the suit or appeal on its merits.

(2) If the objection was taken in the manner mentioned in clause (a) of sub-section (1), but the appellate Court is not satisfied as to both the matters mentioned in clause (b) of that sub-section and has before it the materials necessary for the determination of the other grounds of appeal to itself, it shall dispose of the appeal as if there had been no defect of jurisdiction in the Court of first instance or lower appellate Court.

(3) If the objection was taken in that manner and the appellate Court is satisfied as to both those matters and has not those materials before it, it shall proceed to deal with the appeal under the rules applicable to the Court with respect to the hearing of appeals; but if it remands the suit or appeal, or frames and refers issues for trial, or requires additional evidence to be taken, it shall direct its order to a Court competent to entertain the suit or appeal.

(4) The provisions of this section with respect to an appellate Court shall, so far as they can be made applicable, apply to a Court exercising revisional jurisdiction under section 115 of the Code of Civil Procedure or other enactment for the time being in force.

12. Omitted.

THE SUCCESSION CERTIFICATE ACT, 1977.**Act No. XXXIX of 1977.****CONTENTS.****SECTION.****SECTION.**

1. Omitted.
2. Omitted.
3. Definitions.
4. Proof of representative title a condition precedent to recovery through the Courts of debts from debtors of deceased persons.
5. Court having jurisdiction to grant certificate.
6. Application for certificate.
7. Procedure on application.
8. Contents of certificate.
9. Requisition of security from grantee of certificate.
10. Extension of certificate.
11. Forms of certificate and extended certificates.
12. Amendment of certificate in respect of powers as to securities.
13. Omitted.
14. Mode of collecting court-fees on certificates.

extended by a Court outside the State.

18. Revocation of certificate.
19. Appeal.
20. Effect on certificate of previous certificate, probate or letters of administration.
21. Effect on certificate of subsequent probate or letters of administration.
22. Validation of certain payments made in good faith to holder of invalid certificate.
23. Prohibition of exercise of certain powers by curtors.
24. Omitted.
25. Effect of decisions under this Act and liability of holder of certificate thereunder.
26. Investiture of inferior Courts with jurisdiction of District Courts for this Act.
27. Surrender of superseded and invailed certificate.
28. Omitted.

15. Local extent of certificate.

THE FIRST SCHEDULE—Omitted.

16. Effect of certificate.

THE SECOND SCHEDULE.—FORMS OF CERTIFICATE AND EXTENDED CERTIFICATE.

17. Effect of certificate granted or

THE SUCCESSION CERTIFICATE ACT, 1977.**Act No. XXXIX of 1977.**

[Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No. 8372, dated 11th September, 1920 and State Council Resolution No. 1, dated 8th April 1925, (Notification No. 14-L/81).]

An Act to facilitate the collection of debts on succession and afford protection to parties paying debts to the representatives of deceased persons.

WHEREAS it is expedient to facilitate the collections of debts on successions and afford protection to parties paying debts to the representatives of deceased persons; It is hereby enacted as follows:—

- ¹1. Omitted
2. Omitted.

Definitions.

3. In this Act unless there is something repugnant in the subject or context,—

(1) "District Court", subject to the other provisions of this Act and of any other enactment for the time being in force, means a Court presided over by a District Judge; and

(2) "Security" means—

(a) any promissory note, debenture, stock or other security of the Government of India;

(b) any bond, debenture, or annuity charged by the Imperial Parliament on the revenues of India;

(c) any stock or debenture of, or share in, a company or other incorporated institution;

(d) any debenture or other security for money issued by, or on behalf of a local authority;

(e) any other security which ²[the Government] may, by notification in the Government Gazette, declare to be a security for purposes of this Act.

4. (1) No Court shall—

Proof of representative title a condition precedent to recovery through the Court of debts from debtors of deceased persons.

(a) pass a decree against a debtor of a deceased person for payment of his debt to a person claiming to be entitled to the effects of the deceased person or any part thereof, or

¹Short title, extent and commencement are given and regulated by Act IV of 1977.

²Substituted for "His Highness" vide Act X of 1996 published in the Government Gazette dated 15th Bhadon 1996

(b) proceed, upon an application of a person claiming to be so entitled, to execute against such a debtor a decree or order for the payment of his debt, except on the production, by the person so claiming, of—

(i) a probate or letters of administration evidencing the grant to him of administration to the estate of the deceased, or
(ii) a certificate granted under this Act or the Succession Certificate Regulation of 1896 and having the debt specified therein.

(2) The word “debt” in sub-section (1) includes any debt except rent, revenue or profits payable in respect of land used for agricultural purposes.

5. The District Court within the jurisdiction of which the deceased ordinarily resided at the time of his death, or if at that time he had no fixed place of residence then within the jurisdiction of which any part of the property of the deceased may be found, may grant a certificate under this Act.

Court having jurisdiction to grant certificate.

6. (1) Application for such a certificate must be made to the District Court by a petition signed and verified by or on behalf of the applicant in the manner prescribed by the Code of Civil Procedure for the signing and verification of a plaint by or on behalf of a plaintiff and setting forth the following particulars, namely:—

Application for certificate.

- (a) the time of the death of the deceased;
- (b) the ordinary residence of the deceased at the time of his death and, if such residence was not within the local limits of the jurisdiction of the Court to which the application is made, then the property of the deceased within those limits;
- (c) the family or other near relatives of the deceased and their respective residences;
- (d) the right in which the petitioner claims;
- (e) the absence of any impediment under any other provision of this Act or any other enactment, to the grant of the certificate or to the validity thereof if it were granted; and
- (f) the debts and securities in respect of which the certificate is applied for.

(2) If the petition contains any averment which the person verifying it knows or believes to be false, or does not believe to be true, that person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

¹[(3) Application for such a certificate may be made in respect of any debt or debts due to the deceased creditor or in respect of portions thereof.]

7. (1) If the District Court is satisfied that there is ground for entertaining the application, it shall fix a day for the hearing thereof and cause notice of the application and of the day fixed for the hearing—

(a) to be served on any person to whom, in the opinion of the Court, special notice of the application should be given, and

(b) to be posted on some conspicuous part of the court-house and published in such other manner, if any, as the Court, subject to any rules made by the High Court, in this behalf, thinks fit,

and upon the day fixed, or as soon thereafter as may be practicable, shall proceed to decide in a summary manner the right to the certificate.

(2) When the Court decides the right thereto to belong to the applicant it shall make an order for the grant of certificate to him.

(3) If the Court cannot decide the right to the certificate without determining questions of law or fact which seem to it to be too intricate and difficult for determination in a summary proceeding, it may nevertheless grant a certificate to the applicant if he appears to be the person having *prima facie* the best title thereto.

(4) When there are more applicants than one for a certificate and it appears to the Court that more than one of such applicants are interested in the estate of the deceased, the Court may, in deciding to whom the certificate is to be granted, have regard to the extent of interest, and the fitness in other respects, of the applicants.

8. When the District Court grants a certificate, it shall therein specify the debts and securities set forth in the application for the certificate and may thereby empower the person to whom the certificate is granted—

(a) to receive interest or dividends on, or

(b) to negotiate or transfer, or

(c) both to receive interest or dividends on, and to negotiate or transfer the securities or any of them.

9. (1) The District Court shall in any case in which it proposes to proceed under section 7, sub-section (3) or sub-section (4), and may, in any other case, require, as a condition precedent to the granting of a certificate, that the person to whom it proposes to make the grant shall give to the Judge of the Court, to ensure for the benefit of the Judge for the time being, a bond with one or more surety or sureties, or other sufficient

security, for rendering an account of debts and securities received by him and for indemnity of persons who may be entitled to the whole or any part of those debts and securities.

(2) The Court may, on application made by petition and on cause shown to its satisfaction, and upon such terms as to security, or providing that the money received be paid into Court, or otherwise as the Court thinks fit, assign the bond or other security to some proper person, and that person shall thereupon be entitled to sue thereon in his own name as if it had been originally given to him instead of to the Judge of the Court, and to recover, as trustee for all persons interested, such amount as may be recoverable thereunder.

10. (1) A District Court may from time to time, on the application of the holder of a certificate under this Act, extend the certificate to any debt or security not originally specified therein, and every such extension shall have the same effect as if the debt or security to which the certificate is extended had been originally specified therein.

(2) Upon the extension of a certificate, powers with respect to the receiving of interest or dividends on, or the negotiation or transfer of, any security to which the certificate has been extended may be conferred, and a bond or further bond or other security for the purposes mentioned in the last foregoing section may be required, in the same manner as upon the original grant of a certificate.

11. Certificates shall be granted and extensions of certificates shall be made, as nearly as circumstances admit, in the forms set forth in the second schedule.

12. Where a District Court has not conferred on the holder of a certificate any power with respect to a security specified in the certificate, or has only empowered him to receive interest or dividends on, or to negotiate or transfer, the security, the Court may, on application made by petition and on cause shown to its satisfaction, amend the certificate by conferring any of the powers mentioned in section 8, or by substituting any one for any other of those powers.

13. Omitted.

14. (1) Every application for a certificate or for the extension of a certificate must be accompanied by a deposit of a sum equal to the fee payable under the first schedule to the Court-fees Act in respect of the certificate or extension applied for.

(2) If the application is allowed, the sum deposited by the applicant shall be expended, under the direction of the

Court, in the purchase of the stamp to be used for denoting the fee payable as aforesaid.

(3) Any sum received under sub-section (1) and not expended under sub-section (2) shall be refunded to the person who deposited it.

15. A certificate under this Act shall have effect throughout the whole of the State.

Local extent of certificate.

16. Subject to the provisions of this Act, the certificate of the District Court shall, with respect to the debts and securities specified therein, be conclusive as against the persons owing such debts or liable on such securities, and shall, notwithstanding any defect, afford full indemnity to all such persons as regards all payments made, or dealings had, in good faith, in respect of such debts or securities to or with the person to whom the certificate was granted.

Effect of certificate.

17. Where a certificate in the form, as nearly as circumstances admit, of the second schedule has been granted by a Court outside the State or where a certificate so granted has been extended in such form by such Court, the certificate shall, when stamped in accordance with the provisions of the Court-fees Act with respect to certificates under this Act, have the same effect in the State as a certificate granted or extended under this Act.

Effect of certificate granted or extended by a Court outside the State.

18. A certificate granted under this Act may be revoked for any of the following causes, namely:—

Revocation of certificate.

(a) that the proceedings to obtain the certificate were defective in substance;

(b) that the certificate was obtained fraudulently by the making of a false suggestion, or by the concealment from the Court of something material to the case;

(c) that the certificate was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant thereof, though such allegation was made in ignorance or inadvertently;

(d) that the certificate has become useless and inoperative through circumstances;

(e) that a decree or order made by a competent Court in a suit or other proceeding with respect to effects comprising debts or securities specified in the certificate renders it proper that the certificate should be revoked.

19. (1) Subject to the other provisions of this Act, an appeal shall lie to the High Court from an order of a District Court granting, refusing

Appeal.

or revoking a certificate under this Act, and the High Court may, if it thinks fit, by its order on the appeal, declare the person to whom the certificate should be granted and direct the District Court, on application being made therefor, to grant it accordingly, in supersession of the certificate, if any, already granted.

(2) An appeal under sub-section (1) must be preferred within the time allowed for an appeal under the Code of Civil Procedure.

(3) Subject to the provisions of sub-section (1) and of Orders 46 and 47 and sections 113 to 115 of the Code of Civil Procedure as applied by section 141 of that Code, an order of a District Court under this Act shall be final.

20. Save as provided by this Act, a certificate granted thereunder in respect of any of the effect of a deceased person shall be invalid if there has been a previous grant of such a certificate or of probate or letters of administration in respect of the estate of the deceased person and if such previous grant is in force.

21. (1) A grant of probate or letters of administration under the Probate and Administration Act, in respect of an estate, shall be deemed to supersede any certificate previously granted under this Act in respect of any debts or securities included in the estate.

(2) When at the time of the grant of the probate or letters any suit or other proceeding instituted by the holder of the certificate regarding any such debt or security is pending, the person to whom the grant is made shall, on applying to the Court in which the suit or proceeding is pending, be entitled to take the place of the holder of the certificate in the suit or proceeding.

22. Where a certificate under this Act has been superseded or is invalid by reason of the certificate having been revoked under section 18, or by reason of the grant of a certificate to a person named in an appellate order under section 19, or by reason of a certificate having been previously granted, or by reason of a grant of probate or letters of administration, or for any other cause, all payments made or dealings had, as regards debts and securities specified in the superseded or invalid certificate, to or with the holder of that certificate in ignorance of its supersession or invalidity, shall be held good against claims under any other certificate or under the probate or letters of administration.

23. (1) Where a certificate has been granted under this Act or the Succession Certificate Regulation of 1896, or a grant of probate or letters of administration has been made, a curator appointed under the Succession (Property Protection) Act shall not exercise any authority lawfully belonging to the holder of the certificate or to the executor or administrator.

Prohibition of exercise of certain powers by curators.

(2) But persons who have paid debts or rents to a curator authorised by a Court to receive them shall be indemnified, and the curator shall be responsible for the payment thereof to the person who has obtained the certificate, probate or letters of administration, as the case may be.

24. Omitted.

25. No decision under this Act upon any question of right between any parties shall be held to bar the trial of the same question in any suit or in any other proceeding between the same parties, and nothing in this Act shall be construed to affect the liability of any person who may receive the whole or any part of any debt or security, or any interest or dividend on any security to account therefor to the person lawfully entitled thereto.

Effect of decisions under this Act, and the liability of holder of certificate thereunder.

Investiture of inferior Courts with jurisdiction of District Court for purposes of this Act.

26. (1) ¹[The Government] may, by notification in the Government Gazette, invest any Court inferior in grade to a District Court with the functions of a District Court under this Act, and may cancel or vary any such notification.

(2) Any inferior Court so invested shall, within the local limits of its jurisdiction, have concurrent jurisdiction with the District Court in the exercise of all the powers conferred by this Act upon the District Court, and the provisions of this Act relating to the District Court shall apply to such an inferior Court as if it were a District Court:

Provided that an appeal from any such order of an inferior Court as is mentioned in sub-section (1) of section 19 shall lie to the District Court, and not to the High Court, and that the District Court may, if it thinks fit, by its order on the appeal, make any such declaration and direction as that sub-section authorises the High Court to make by its order on an appeal from an order of a District Court.

(3) An order of a District Court on an appeal from an order of an inferior Court under the last foregoing sub-section shall, subject to the provisions of Orders 46, 47 and sections 113 to 115 of the Code of Civil Procedure as applied by section

¹Substituted for "His Highness" vide Act X of 1996 published in the Government Gazette dated 15th Bhadon 1996.

Securities.

Serial number.	DESCRIPTION.			Market-value of security on date of application for certificate.
	Distinguishing number or letter of security.	Name, title or class of security.	Amount or par value of security.	

This certificate is accordingly granted to you and empowers you to collect those debts [AND] [TO RECEIVE] [INTEREST] [DIVIDENDS] [ON] [TO NEGOTIATE] [TO TRANSFER] [THOSE SECURITIES].

Dated this

day of

DISTRICT JUDGE.

In the Court of

On the application of A. B. made to me on the day of
 , I hereby extend this certificate to the
 following debts and securities, namely:—

Debts.

Serial number.	Name of debtor.	Amount of debt, including interest, on date of application for extension.	Description and date of instrument, if any, by which the debt is secured.

Securities.

Serial number.	DESCRIPTION.			Market-value of security on date of application for extension.
	Distinguishing number or letter of security.	Name, title or class of security.	Amount of par value of security.	

This extension empowers A. B. to collect those debts [AND]
[to RECEIVE] [INTEREST] [DIVIDENDS] [ON] [TO NEGOTIATE]
[TO TRANSFER] [THOSE SECURITIES].

Dated this

day

DISTRICT JUDGE.

THE STAMP ACT, 1977.

Act No. XL of 1977.

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THE STAMP ACT, 1977.**Act No. XL of 1977.**

[Sanctioned by His Highness the Maharaja Sahib Bahadur
per Chief Minister's endorsement No. 8372, dated 11th September
1920 and State Council Resolution No. 1, dated 8th April 1925.
(Notification 14-L/81).]

**An Act to consolidate and amend the Law relating to
Stamps.**

WHEREAS it is expedient to consolidate and amend the
law relating to stamps; It is hereby enacted as follows:—

CHAPTER I.**PRELIMINARY.**

1. (i) ¹[This Act may be called the Stamp Act, 1977.
(ii) It extends to the whole of Jammu and Kashmir State.
It shall come into force on the 1st day of Baisakh, 1977.]

2. In this Act, unless there is something repugnant in
the subject or context,—
“Definitions.”

Banker. (1) “banker” includes a bank and any
person acting as a banker:

(2) “bill of exchange” means a bill of exchange as de-
fined by the Negotiable Instruments Act
“Bill of exchange.” and includes also a hundi, and any
other document entitling or purporting to
entitle any person, whether named therein or not, to payment
by any other person of, or to draw upon any other person for,

¹Section 1 was revived by Act XI of 1993 published in the Government Gazette
dated 26th Maghar 1993.

any sum of money:

“Bill of exchange payable on demand.”

(3) “bill of exchange payable on demand” includes—

(a) an order for the payment of any sum of money by a bill of exchange or promissory note, or for the delivery of any bill of exchange or promissory note in satisfaction of any sum of money, or for the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen;

(b) an order for the payment of any sum of money weekly, monthly or at any other stated periods; and

(c) a letter of credit, that is to say, any instrument by which one person authorises another to give credit to the person in whose favour it is drawn;

(4) Omitted.

“Bond”

(5) “bond” includes—

(a) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;

(b) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another; and

(c) any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another;

(6) “chargeable” means, as applied to an instrument executed or first executed after the commencement of this Act, chargeable under this Act and, as applied to any other instrument, chargeable under the law in force in the State when such instrument was executed or, where several persons executed the instrument at different times, first executed:

“Chargeable.”

(7) “cheque” means a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand:

“Cheque.”²

(8) Omitted.

¹[(9) “Collector” means the Governor of a Province unless the Revenue Minister with the previous sanction of the Council by notification in the Government Gazette directs that the functions of a collector under some specified section or sections of this Act shall or may be exercised by the Wazir-i-Wazarat of a local

“Collector.”

¹Clause 9 inserted by Act No. XVII of 1994 published in the Government Gazette dated 9th Baisakh 1995.

area specified in the notification thereof]:

(10) "conveyance" includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred *inter vivos* and which is not otherwise specifically provided for by Schedule 1:

X (11) "duly stamped", as applied to an instrument, means that the instrument bears an adhesive or impressed stamp of not less than the proper amount and that such stamp has been affixed or used in accordance with the law for the time being in force in the State:

(12) "executed" and "execution" used with reference to instruments, means "signed" and "signature":

(13) "impressed stamp" includes—

(a) labels affixed and impressed by the proper officer, and

(b) stamps embossed or engraved on stamped paper:

(14) "instrument" includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded:

(15) "instrument of partition" means any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any revenue authority or any Civil Court and award by an arbitrator directing a partition:

(16) "lease" means a lease of immovable property, and includes also—

(a) a *patta*;

(b) a *ka'buliyat* or other undertaking in writing, not being a counterpart of a lease, to cultivate, occupy or pay or deliver rent for immovable property;

(c) any instrument by which tolls of any description are let;

(d) any writing on an application for a lease intended to signify that the application is granted:

(16-A) "marketable security" means a security of such a description as to be capable of being sold in any stock market in British India or the State or in the United Kingdom:

(17) "mortgage-deed" includes every instrument whereby, for the purpose of securing money advanced, or to be advanced, by way of loan,

or an existing or future debt, or the performance of an engagement, one person transfers, or creates, to, or in favour of, another, a right over or in respect of specified property:

(18) "paper" includes vellum, parchment or any other material on which an instrument may be written:

"Policy of insurance."

(19) "policy of insurance" includes—

(a) any instrument by which one person, in consideration of a premium, engages to indemnify another against loss, damage or liability arising from an unknown or contingent event;

(b) a life-policy and any policy insuring any person against accident or sickness, and any other personal insurance;

(20) Omitted.

(21) "power-of-attorney" includes any instrument (not chargeable with a fee under the law relating to court-fees for the time being in force) empowering a specified person to act for and in the name of the person executing it:

(22) "promissory note" means a promissory note as defined by the Negotiable Instruments Act;

"Promissory note."

it also includes a note promising the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen:

(23) "receipt" includes any note, memorandum or writing—

"Receipt."

(a) whereby any money, or any bill of exchange, cheque or promissory note is acknowledged to have been received, or

(b) whereby any other movable property is acknowledged to have been received in satisfaction of a debt, or

(c) whereby any debt or demand, or any part of a debt or demand, is acknowledged to have been satisfied or discharged, or

(d) which signifies or imports any such acknowledgment,

and whether the same is or is not signed with the name of any person: and

(24) "settlement" means any non-testamentary disposition, in writing, of movable or immovable property made—

"Settlement."

(a) in consideration of marriage,

(b) for the purpose of distributing property of the settler among his family or those for whom he desires to provide,

or for the purpose of providing for some person dependent on him, or

(c) for any religious or charitable purpose; and includes an agreement in writing to make such a disposition and, where any such disposition has not been made in writing, any instrument recording, whether by way of declaration of trust or otherwise, the terms of any such disposition.

CHAPTER II.

STAMP DUTIES.

A —Of the Liability of Instrument to Duty.

3. Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in that schedule as the proper duty therefor respectively, that is to say—

(a) every instrument mentioned in that schedule which, not having been previously executed by any person, (is executed by any person) is executed in the State on or after the date on which this Act comes into force;

(b) every bill of exchange, ¹[*] ¹[payable otherwise than on demand] or promissory note drawn or made out of the State on or after that day and accepted or paid, or presented for acceptance or payment, or endorsed, transferred, or otherwise negotiated, in the State; and

(c) every instrument (other than a bill of exchange, ¹[* *] or promissory note) mentioned in that schedule, which, not having been previously executed by any person, is executed out of the State on or after that day, relates to any property situate, or to any matter or thing done or to be done, in the State and is received in the State:

Provided that no duty shall be chargeable in respect of—

(1) any instrument executed by, or on behalf of, or in favour of, the Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument;

(2) Omitted.

¹Amended by Act XI of 1993 published in Government Gazette dated 26th Maghar 1993. In clause (b), the word "cheque" omitted and words within brackets substituted; in clause (c) word "cheque" omitted.

4. (1) Where, in the case of any sale, mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed in Schedule I, for the conveyance, mortgage or settlement, and each of the other instruments shall be chargeable with a duty of ¹[one rupee and eight annas] instead of the duty (if any) prescribed for it in that Schedule.

Several instruments used in single transaction of sale, mortgage or settlement.

(2) The parties may determine for themselves which of the instruments so employed shall, for the purposes of subsection (1), be deemed to be the principal instrument:

Provided that the duty chargeable on the instrument so determined shall be the highest duty which would be chargeable in respect of any of the said instruments employed.

4-A. Where in respect of an agreement to execute a lease or sub-lease stamp duty has been paid of an amount which is not less than the amount of stamp duty prescribed in Schedule I for the lease or sub-lease, a lease or sub-lease executed in pursuance of the agreement, shall be chargeable with a duty not exceeding ¹[one rupee] instead of the duty, if any, prescribed for it in that Schedule.

Stamps duty on lease where agreement to execute it bears the stamp duty prescribed for the lease.

5. Any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act.

Instruments relating to several distinct matters.

6. Subject to the provisions of the last preceding section, an instrument so framed, as to come within two or more of the descriptions ²[given] in Schedule I, shall, where the duties chargeable thereunder are different be chargeable only with the highest of such duties:

Instruments coming within several descriptions in Schedule I.

Provided that nothing in this Act contained shall render chargeable with duty exceeding ¹[one rupee and eight annas] a counterpart or duplicate of any instrument chargeable with duty and in respect of which the proper duty has been paid.

7. Omitted.

8. Omitted.

¹Substituted by Notification No. 11-L/86 published in the Government Gazette dated 28th Maghar 1986 for "one rupee", "eight annas" and "one rupee" respectively.

²Inserted by Notification No. 11-L/86 published in the Government Gazette dated 28th Maghar 1986.

Power to reduce,
remit or compound
duties.

9. ¹[The Government] may, by rule or order published in the Government Gazette,—

(a) reduce or remit, whether prospectively or retrospectively, in the whole or any part of the State, the duties with which any instruments or any particular class of instruments, or any of the instruments belonging to such class, or any instruments when executed by or in favour of any particular class of persons, or by or in favour of any members of such class, are chargeable, and,

(b) provide for the composition or consolidation of duties in the case of issues by any incorporated company or other body corporate of debentures, bonds or other marketable securities.

B.—Of Stamps and the mode of using them.

10. (1) Except as otherwise expressly provided in this Act, all duties with which any instruments are chargeable shall be paid, and such payment shall be indicated on such instruments, by means only of stamps—

(a) according to the provisions herein contained; or,
(b) when no such provision is applicable thereto, as ¹[the Government] may by rule direct.

(2) The rules made under sub-section (1) may, among other matters, regulate,—

(a) in the case of each kind of instrument—the description of stamps which may be used;

(b) in the case of instruments stamped with impressed stamps—the number of stamps which may be used;

(c) in the case of bills of exchange or promissory notes written in any Oriental language—the size of the paper on which they are written.

Use of adhesive stamps. 11. The following instruments may be stamped with adhesive stamps, namely:—

(a) instruments chargeable with the duty of one anna or half anna, except parts of bills of exchange payable otherwise than on demand and drawn in sets;

(b) bills of exchange, ²[* *] and promissory notes drawn or made out of the State; ✓

¹In sections 9, 10, 16, 18, 26, 33 (3), 37, 49, 55, 70 (1), 75, 76-A and 78 for the words "His Highness" the words "the Government" substituted *vide* Act X of 1996 published in the Government Gazette dated 15th Bhadon 1996.

²"Cheques" omitted by Act XI of 1993 published in the Government Gazette dated 26th Maghar 1993.

(c) entry as an advocate, or pleader on the roll of the High Court;

(d) notarial acts; and

(e) transfers by endorsement of shares in any incorporated company or other body corporate.

12. (1) (a) Whoever affixes any adhesive stamp to any instrument chargeable with duty which has been executed by any person shall, when affixing such stamp, cancel the same so that it cannot be used again; and

Cancellation
of adhesive stamps.

(b) whoever executes any instrument on any paper bearing an adhesive stamp shall, at the time of execution, unless such stamp has been already cancelled in manner aforesaid, cancel the same so that it cannot be used again.

(2) Any instrument bearing an adhesive stamp which has not been cancelled so that it cannot be used again, shall, so far as such stamp is concerned, be deemed to be unstamped.

(3) The person required by sub-section (1) to cancel an adhesive stamp may cancel it by writing on or across the stamp his name or initials or the name or initials of his firm with the true date of his so writing, or in any other effectual manner.

13. Every instrument written upon paper stamped with an impressed stamp shall be written in such manner that the stamp may appear on the face of the instrument and cannot be used for or applied to any other instrument.

Instruments stamped
with impressed stamps
how to be written.

Where a stamp duty payable in respect of an instrument is made of two or more papers stamped with impressed stamp, the instrument shall be written, in such manner that some part of the writing shall, as far as possible, appear on each such paper so as to leave as few blank sheets as possible. Each blank sheet shall be dated and signed and shown as part of the instrument.

14. No second instrument chargeable with duty shall be written upon a piece of stamped paper upon which an instrument chargeable with duty has already been written:

Only one instrument
to be on same stamp.

Provided that nothing in this section shall prevent any endorsement which is duly stamped or is not chargeable with duty being made upon any instrument for the purpose of transferring any right created or evidenced thereby, or of acknowledging the receipt of any money or goods the payment or delivery of which is secured thereby.

Instrument written
contrary to section 13
or 14 deemed un-
stamped.

15. Every instrument written in contravention of section 13 or section 14 shall be deemed to be unstamped.

16. Where the duty with which an instrument is chargeable, or its exemption from duty, depends in any manner upon the duty actually paid in respect of another instrument, the payment of such last mentioned duty shall if application is made in writing to the Collector for that purpose, and on production of both the instruments, be denoted upon such first-mentioned instrument, by endorsement under the hand of the Collector or in such other manner (if any) as ¹[the Government] may by rule prescribe.

Denoting duty.

C.—Of the time of Stamping Instruments.

17. All instruments chargeable with duty and executed by any person in the State shall be stamped before or at the time of execution.

Instruments executed in the State.

18. (1) Every instrument chargeable with duty executed only out of the State, and not being a bill of exchange, ²[*] or promissory note, may be stamped within three months after it has been first received in the State.

Instruments other than bills and notes executed out of the State.

(2) Where any such instrument cannot, with reference to the description of stamp prescribed therefor, be duly stamped by a private person, it may be taken within the said period of three months to the Collector, who shall stamp the same, in such manner as ¹[the Government] may by rule prescribe, with a stamp of such value as the person so taking such instrument may require and pay for.

19. The first holder in the State of any bill of exchange, ²[*] ³[payable otherwise than on demand] or promissory note drawn or made out of the State shall, before he presents the same for acceptance or payment, or endorses, transfers or otherwise negotiates the same in the State, affix thereto the proper stamp and cancel the same:

Bills and notes drawn out of the State.

Provided that,—

(a) if, at the time any such bill of exchange, ²[*] or note comes into the hands of any holder thereof in the State, the proper adhesive stamp is affixed thereto and cancelled in manner prescribed by section 12 and such holder has no reason to believe that such stamp was affixed or cancelled otherwise than by the person and at the time required by this Act, such stamp shall, so far as relates to such holder, be deemed to have been duly affixed and cancelled:

¹See footnote under section 9.

²“Cheque” omitted and words in brackets inserted by Act XI of 1993 published in the Government Gazette dated 26th Maghar 1993.

(b) nothing contained in this proviso shall relieve any person from any penalty incurred by him for omitting to affix or cancel a stamp.

20. ¹[When an instrument is chargeable with *ad valorem* duty in respect of any money expressed in any currency other than that of British India, such duty shall be calculated on the value of such money in the currency of British India according to the rate of exchange prevailing in India on the day of the date of the instrument under a Notification of the Governor-General in Council issued under sub-section 2 of section 20 of Act II of 1899].

21. Where an instrument is chargeable with *ad valorem* duty in respect of any stock or of any marketable or other security, such duty shall be calculated on the value of such stock or security according to the average price or the value thereof on the day of the date of the instrument.

Stock and marketable securities, how to be valued.

22. Where an instrument contains a statement of current rate of exchange, or average price, as the case may require, and is stamped in accordance with such statement, it shall, so far as regards the subject-matter of such statement, be presumed, until the contrary is proved, to be duly stamped.

Effect of statement of rate of exchange or average price.

23. Where interest is expressly made payable by the terms of an instrument, such instrument shall not be chargeable with duty higher than that with which it would have been chargeable had no mention of interest been made therein.

Instruments reserving interest.

Certain instruments connected with mortgages of marketable securities to be chargeable as agreements.

23-A. (1) Where an instrument (not being a promissory note or bill of exchange)—

(a) is given upon the occasion of the deposit of any marketable security by way of security for money advanced or to be advanced by way of loan, or for an existing or future debt, or

(b) makes redeemable or qualifies a duly stamped transfer, intended as a security, of any marketable security, it shall be chargeable with duty as if it were an agreement or memorandum of an agreement chargeable with duty under Article No. 5(c) of Schedule I.

(2) A release or discharge of any such instrument shall only be chargeable with the like duty.

24. Where any property is transferred to any person in consideration, wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance upon the property or not, such debt, money or stock is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the transfer is chargeable with *ad valorem* duty :

How transfer in consideration of debt, or subject to future payment, etc., to be charged.

Provided that nothing in this section shall apply to any such certificate of sale as is mentioned in Article No. 18 of Schedule I.

EXPLANATION.—In the case of a sale of property subject to a mortgage or other incumbrance, any unpaid mortgage-money or money charged, together with the interest (if any) due on the same, shall be deemed to be part of the consideration for the sale:

Provided that, where property subject to a mortgage is transferred to the mortgagee, he shall be entitled to deduct from the duty payable on the transfer the amount of any duty already paid in respect of the mortgage.

Illustrations.

(1) A owes B Rs. 1,000. A sells a property to B, the consideration being Rs. 500 and the release of the previous debt of Rs. 1,000. Stamp-duty is payable on Rs. 1,500.

(2) A sells a property to B for Rs. 500 which is subject to a mortgage to C for Rs. 1,000 and unpaid interest Rs. 200. Stamp-duty is payable on Rs. 1,700.

(3) A mortgages a house of the value of Rs. 10,000 to B for Rs. 5,000. B afterwards buys the house from A. Stamp-duty is payable on Rs. 10,000 less the amount of stamp-duty already paid for the mortgage.

25. Where an instrument is executed to secure the payment of an annuity or other sum payable periodically, or where the consideration for a conveyance is an annuity or other sum payable periodically, the amount secured by such instrument or the consideration for such conveyance, as the case may be, shall, for the purposes of this Act be deemed to be,—

Valuation in case of annuity, etc.

(a) where the sum is payable for a definite period so that the total amount to be paid can be previously ascertained—such total amount;

(b) where the sum is payable in perpetuity or for an indefinite time not terminable with any life in being at the date of such instrument or conveyance—the total amount which, according to the terms of such instrument or conveyance, will

or may be payable during the period of ten years calculated from the date on which the first payment becomes due; and

(c) where the sum is payable for an indefinite time terminable with any life in being at the date of such instrument or conveyance—the maximum amount which will or may be payable as aforesaid during the period of ten years calculated from the date on which the first payment becomes due.

26. Where the amount or value of the subject-matter of any instrument chargeable with *ad valorem* duty cannot be, or (in the case of an instrument executed before the commencement of this Act) could not have been, ascertained at the date of its execution or first execution, nothing shall be claimable under such instrument more than the highest amount or value for which if stated in an instrument of the same description, the stamp actually used would, at the date of such execution, have been sufficient:

Stamp where value of subject-matter is indeterminate.

Provided that, in the case of the lease of a mine in which royalty or a share of the produce is received as the rent or part of the rent, it shall be sufficient to have estimated such royalty or the value of such share, for the purpose of stamp-duty,—

(a) when the lease has been granted by or on behalf of ¹[the Government], at such amount or value as the Collector may, having regard to all the circumstances of the case, have estimated as likely to be payable by way of royalty or share to ¹[the Government] under the lease, or,

(b) when the lease has been granted by any other person, at twenty thousand rupees a year;

and the whole amount of such royalty or share, whatever it may be, shall be claimable under such lease:

Provided also that, where proceedings have been taken in respect of an instrument under section 31 or 41, the amount certified by the Collector shall be deemed to be the stamp actually used at the date of execution.

27. The consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.

Facts affecting duty to be set forth in instrument.

28. () Where any property has been contracted to be sold for one consideration for the whole, and is conveyed to the purchaser in separate parts by different instruments, the consideration shall be apportioned in such manner as the parties think fit, provided that a distinct con-

Direction as to duty in case of certain conveyances.

¹See footnote under section 9:

sideration for each separate part is set forth in the conveyance relating thereto, and such conveyance shall be chargeable with *ad valorem* duty in respect of such distinct consideration.

(2) Where property contracted to be purchased for one consideration for the whole by two or more persons jointly, or by any person for himself and others, or wholly for others, is conveyed in parts by separate instruments to the persons by or for whom the same was purchased, for distinct parts of the consideration, the conveyance of each separate part shall be chargeable with *ad valorem* duty in respect of the distinct part of the consideration therein specified.

(3) Where a person, having contracted for the purchase of any property but not having obtained a conveyance thereof, contracts to sell the same to any other person and the property is in consequence conveyed immediately to the sub-purchaser, the conveyance shall be chargeable with *ad valorem* duty in respect of the consideration for the sale by the original purchaser to the sub-purchaser.

(4) Where a person, having contracted for the purchase of any property but not having obtained a conveyance thereof, contracts to sell the whole, or any part thereof, to any other person or persons and the property is in consequence conveyed by the original seller to different persons in parts, the conveyance of each part sold to a sub-purchaser shall be chargeable with *ad valorem* duty in respect only of the consideration paid by such sub-purchaser, without regard to the amount or value of the original consideration; and the conveyance of the residue (if any) of such property to the original purchaser shall be chargeable with *ad valorem* duty in respect only of the excess of the original consideration over the aggregate of the considerations paid by the sub-purchasers:

Provided that the duty on such last-mentioned conveyance shall in no case be less than one rupee.

(5) Where a sub-purchaser takes an actual conveyance of the interest of the person immediately selling to him, which is chargeable with *ad valorem* duty in respect of the consideration paid by him and is duly stamped accordingly any conveyance to be afterwards made to him of the same property by the original seller shall be chargeable with a duty equal to that which would be chargeable on a conveyance for the consideration obtained by such original seller, or, where such duty would exceed five rupees, with a duty of five rupees.

E—Duty by whom payable.

Duties by whom payable.

29. In the absence of an agreement to the contrary, the expense of providing

the proper stamp shall be borne,—

(a) in the case of any instrument described in any of the following articles of Schedule I, namely:—

No. 2 (Administration Bond),

No. 6 (Agreement relating to Deposit of Title-deeds, Pawn or Pledge),

No. 13 (Bill of exchange),

No. 15 (Bond),

No. 26 (Customs Bond),

No. 27 (Debenture),

No. 32 (Further Charge),

No. 34 (Indemnity-bond),

No. 40 (Mortgage-deed),

No. 49 (Promissory-note),

No. 55 (Release),

No. 57 (Security-bond or Mortgage-deed),

No. 58 (Settlement),

No. 62 (a) Transfer of shares in an incorporated company or other body corporate),

No. 62 (b) (Transfer of debentures, being marketable securities, whether the debenture is liable to duty or not),

No. 62 (c) (Transfer of any interest secured by a bond, mortgage-deed or policy of insurance),—

by the person drawing, making or executing such instrument :

(b) in the case of a policy of insurance other than fire-insurance—by the person effecting the insurance:

(bb) in the case of a policy of fire-insurance— by the person issuing the policy:

(c) in the case of a conveyance (including a reconveyance of mortgaged property) by the grantee: in the case of a lease or agreement to lease—by the lessee or intended lessee:

(d) in the case of a counterpart of a lease—by the lessor:

(e) in the case of an instrument of exchange—by the parties in equal shares:

(f) in the case of certificate of sale—by the purchaser of the property to which such certificate relates: and,

(g) in the case of an instrument of partition—by the parties thereto in proportion to their respective shares in the whole property partitioned, or when the partition is made in execution of an order passed by a revenue-authority or Civil Court or arbitrator, in such proportion as such authority, Court, or arbitrator directs.

30. Any person receiving any money exceeding twenty

Obligation to give receipt in certain cases. rupees in amount, or any bill of exchange, cheque or promissory note for an amount

exceeding twenty rupees, or receiving in satisfaction or part satisfaction of a debt any movable property exceeding twenty rupees in value, shall, on demand by the the person paying or delivering such money, bill, cheque, note or property, give a duly stamped receipt for the same.

Any person receiving or taking credit for any premium or consideration for any renewal of any contract of fire insurance, shall, within one month after receiving or taking credit for such premium or consideration, give a duly stamped receipt for the same.

CHAPTER III.

ADJUDICATION AS TO STAMPS.

31. (1) When any instrument, whether executed or not, Adjudication as to proper stamp. and whether previously stamped or not, is brought to the Collector, and the person bringing it applies to have the opinion of that officer as to the duty (if any) with which it is chargeable, and pays a fee of such amount (not exceeding five rupees and not less than eight annas) as the Collector may in each case direct, the Collector shall determine the duty (if any) with which, in his judgment, the instrument is chargeable.

(2) For this purpose the Collector may require to be furnished with an abstract of the instrument, and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of the duty with which it is chargeable are fully and truly set forth therein, and may refuse to proceed upon any such application until such abstract and evidence have been furnished accordingly:

Provided that—

(a) no evidence furnished in pursuance of this section shall be used against any person in any civil proceeding, except in an enquiry as to the duty with which the instrument to which it relates is chargeable; and

(b) every person by whom any such evidence is furnished, shall on payment of the full duty with which the instrument to which it relates is chargeable, be relieved from any penalty which he may have incurred under this Act by reason of the omission to state truly in such instrument any of the facts or circumstances aforesaid.

32. (1) When an instrument brought to the Collector Certificate by Collector. under section 31 is, in his opinion, one of a description chargeable with duty, and—

(a) the Collector determines that it is already fully

stamped, or

(b) the duty determined by the Collector under section 31, or such a sum as, with the duty already paid in respect of the instrument, is equal to the duty so determined, has been paid,

the Collector shall certify by endorsement on such instrument that the full duty (stating the amount) with which it is chargeable has been paid.

(2) When such instrument is, in his opinion, not chargeable with duty, the Collector shall certify in manner aforesaid that such instrument is not so chargeable.

(3) Any instrument upon which an endorsement has been made under this section, shall be deemed to be duly stamped or not chargeable with duty, as the case may be; and if chargeable with duty shall be receivable in evidence or otherwise, and may be acted upon and registered as if it had been originally duly stamped:

Provided that nothing in this section shall authorise the Collector to endorse—

(a) any instrument executed or first executed in the State and brought to him after the expiration of one month from the date of its execution or first execution, as the case may be; or

(b) any instrument executed or first executed out of the State and brought to him after the expiration of three months after it has been first received in the State.

CHAPTER IV.

INSTRUMENTS NOT DULY STAMPED.

33. (1) Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in the State when such instrument was executed or first executed:

Provided that—

(a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure;

(b) in the case of a Judge of the High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.

(3) For the purposes of this section, in cases of doubt,—
¹[The Government] may determine what offices should be public offices and who shall be deemed to be persons in charge of such public offices.

34. Where any receipt chargeable with a duty of one anna is tendered to or produced before any officer unstamped in the course of the audit of any public account, such officer may in his discretion, instead of impounding the instrument, require a duly stamped receipt to be substituted therefor.

35. No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped:

Provided that—

²[(a) any such instrument not being instrument chargeable with a duty of one anna or a bill of exchange or promissory note, shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable, or in the case of an instrument insufficiently stamped, of the amount required to make up such duty together with a penalty of five rupees, or ten times the amount of the proper duty or if deficient portion thereof exceeds five rupees, of a sum equal to ten times, such duty or portion;

The deficiency in duty and penalty payable under this section shall be realised in revenue stamps].

(b) where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence

¹See footnote under section 9.

²Provision (a) substituted by Act No. VII of 1994 published in Government Gazette dated 9th Baisakh 1995.

against him on payment of a penalty of one rupee by the person tendering it;

(c) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;

(d) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure;

(e) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government, or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act.

36. Where an instrument has been admitted in evidence¹

Admission of instrument where not to be questioned.

such admission shall not, except as provided in section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.

37. '[The Government] may make rules providing that,

Admission of improperly stamped instruments.

where an instrument bears a stamp of sufficient amount but of improper description, it may, on payment of the duty with which

the same is chargeable, be certified to be duly stamped, and any instrument so certified shall then be deemed to have been duly stamped as from the date of its execution.

38. (1) When the persons impounding an instrument

Instruments impounded how dealt with.

under section 33 has by law or consent of parties authority to receive evidence and admits such instrument in evidence upon

payment of a penalty as provided by section 35 or of duty as provided by section 37, he shall send to the Collector an authenticated copy of such instrument, together with a certificate in writing, stating the amount of duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf.

(2) In every other case, the person so impounding an instrument shall send it in original to the Collector.

39. (1) When a copy of an instrument is sent to the

Collector's power to refund penalty paid under section 38, sub-section (1).

Collector under section 38, sub-section (1), he may, if he thinks fit, refund any portion of the penalty in excess of five rupees which has been paid in respect of such instrument.

¹See footnote under section 9.

(2) When such instrument has been impounded only because it has been written in contravention of section 13 or section 14, the Collector may refund the whole penalty so paid.

40. (1) When the Collector impounds any instrument under section 33, or receives any instrument sent to him under section 38, sub-section (2), not being an instrument chargeable with a duty of one anna only or a bill of exchange or promissory note, he shall adopt the following procedure:—

Collector's power to stamp instruments impounded.

(a) if he is of opinion that such instrument is duly stamped or is not chargeable with duty, he shall certify, by endorsement thereon that it is duly stamped, or that it is not so chargeable, as the case may be;

¹[(b) If he is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same together with a penalty of five rupees, or if he thinks fit an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees:]

Provided that, when such instrument has been impounded only because it has been written in contravention of section 13 or section 14, the Collector may, if he thinks fit, remit the whole penalty prescribed by this section.

(2) Every certificate under clause (a) of sub-section (1) shall for the purposes of this Act be conclusive evidence of the matters stated therein.

(3) Where an instrument has been sent to the Collector under section 38, sub-section (2), the Collector shall, when he has dealt with it as provided by this section, return it to the impounding officer.

41. If any instrument chargeable with duty and not duly stamped, not being an instrument chargeable with a duty of one anna only or a bill of exchange or promissory note, is produced by any person of his own motion before the Collector within one year from the date of its execution or first execution, and such person brings to the notice of the Collector the fact that such instrument is not duly stamped and offers to pay to the Collector the amount of the proper duty, or the amount required to make up the same, and the Collector is satisfied that the omission to duly stamp such instrument has been occasioned by accident, mistake or urgent necessity, he may, instead of proceeding under sections

Instruments unduly stamped by accident.

¹Clause (b) substituted by Act No. VII of 1994 published in Government Gazette dated 9th Baisakh 1995.

33 and 40, receive such amount and proceed as next hereinafter prescribed.

¹[Notwithstanding anything contained in section 18 or in the foregoing provisions of this section, if a policy of insurance executed out of the State before the commencement of this provision of the Act is intended to be enforced within the State is not duly stamped and is produced by any person of his own motion before the Collector within one year of the commencement of this provision of the Act and the amount of the proper duty or the amount required to make up the same is offered, the Collector shall receive such amount and instead of proceeding under sections 33 and 40 proceed to validate the document as prescribed under sections 41 and 42].

42. (1) When the duty and penalty (if any) leviable in respect of any instrument have been paid under section 35, section 40 or section 41, the person admitting such instrument in evidence or the Collector, as the case may be, shall certify by endorsement thereon that the proper duty or, as the case may be, the proper duty and penalty (stating the amount of each) have been levied in respect thereof, and the name and residence of the person paying them.

(2) Every instrument so endorsed shall thereupon be admissible in evidence, and may be registered and acted upon and authenticated as if it had been duly stamped, and shall be delivered on his application in this behalf to the person from whose possession it came into the hands of the officer impounding it or as such person may direct:

Provided that—

(a) no instrument which has been admitted in evidence upon payment of duty and a penalty under section 35, shall be so delivered before the expiration of one month from the date of such impounding, or if the Collector has certified that its further detention is necessary and has not cancelled such certificate;

(b) nothing in this section shall effect the Code of Civil Procedure, order XIII, rule 9.

43. The taking of proceedings or the payment of a penalty under this chapter in respect of any instrument shall not bar the prosecution of any person who appears to have committed an offence against the Stamp-law in respect of such instrument:

¹Section 41 Para 2 added by Act No. II of 1995 published in the Government Gazette dated 20th Jeth 1995. This Act was to remain in force for one year and came into operation on 27th Jeth 1995.

Provided that no such prosecution shall be instituted in the case of any instrument in respect of which such a penalty has been paid, unless it appears to the Collector that the offence was committed with an intention of evading payment of the proper duty.

44. (1) When any duty or penalty has been paid under section 35, section 37, section 40 or section 41, by any person in respect of an instrument, and, by agreement or under the provisions of section 29 or any other enactment in force at the time such instrument was executed, some other person was bound to bear the expense of providing the proper stamp for such instrument, the first-mentioned person shall be entitled to recover from such other person the amount of the duty or penalty so paid.

Persons paying duty or penalty may recover same in certain cases.

(2) For the purpose of such recovery any certificate granted in respect of such instrument under this Act shall be conclusive evidence of the matters therein certified.

(3) Such amount may, if the Court thinks fit, be included in any order as to costs in any suit or proceeding to which such persons are parties and in which such instrument has been tendered in evidence. If the Court does not include the amount in such order, no further proceedings for the recovery of the amount shall be maintainable.

45. (1) Where any penalty is paid under section 35 or section 40, ¹[the Government] may, upon application in writing made within one year from the date of the payment, refund such penalty wholly or in part.

Power to Government to refund penalty or excess duty in certain cases.

(2) Where, in the opinion of ¹[the Government], stamp-duty in excess of that which is legally chargeable has been charged and paid under section 35 or section 40, it may, upon application in writing made within three months of the order charging the same, refund the excess.

46. (1) If any instrument sent to the Collector under section 38, sub-section (2), is lost, destroyed or damaged during transmission, the person sending the same shall not be liable for such loss, destruction or damage.

Non-liability for loss of instrument under section 38.

(2) When any instrument is about to be so sent, the person from whose possession it came into the hands of the person impounding the same, may require a copy thereof to be made at the expense of such first-mentioned person and authenticated by the person impounding such instrument.

¹Substituted for "the Revenue Minister" vide Act X of 1996 published in the Government Gazette dated 15th Bhadon 1996.

47. When any bill of exchange, ¹[or] promissory note ¹[*] chargeable with the duty of one anna is presented for payment unstamped, the person to whom it is so presented may affix thereto the necessary adhesive stamp, and, upon cancelling the same in manner hereinbefore provided, may pay the sum payable upon such bill ¹[or] note, ¹[*] and may charge the duty against the person who ought to have paid the same, or deduct it from the sum payable as aforesaid, and such bill, ¹[or] note ¹[*] shall, so far as respects the duty, be deemed good and valid:

Power of payer to stamp bills and promissory notes received by him unstamped.

Provided that nothing herein contained shall relieve any person from any penalty or proceeding to which he may be liable in relation to such bill, ¹[or] note ¹[*].

48. All duties, penalties and other sums required to be paid under this Chapter may be recovered by the Collector by distress and sale of the movable property of the person from whom the same are due, or by any other process for the time being in force for the recovery of arrears of land revenue.

Recovery of duties and penalties.

CHAPTER V.

ALLOWANCES FOR STAMPS IN CERTAIN CASES.

49. Subject to such rules as may be made by ²[the Government] as to the evidence to be required, or the enquiry to be made, the Collector may, on application made within the period prescribed in section 50, and if he is satisfied as to the facts, make allowance for stamps spoiled in the cases hereinafter mentioned, namely:—

Allowance for spoiled stamps.

(a) the stamp on any paper inadvertently and undesignedly spoiled, obliterated or by error in writing or any other means rendered unfit for the purpose intended before any instrument written thereon is executed by any person;

(b) the stamp on any document which is written out wholly or in part, but which is not signed or executed by any party thereto;

(c) in the case of bills of exchange ¹[*]¹[payable otherwise than on demand] or promissory notes—

(1) the stamp on any ¹[such] bill of exchange ¹[*] signed by or on behalf of the drawer which has not been

¹"cheque" or "or cheque" omitted and words in brackets inserted by Act XI of 1993, published in the Government Gazette dated 26th Maghar 1993.

²See footnote under section 9.

accepted or made use of in any manner whatever or delivered out of his hands for any purpose other than by way of tender for acceptance: provided that the paper on which any such stamp is impressed does not bear any signature intended as or for the acceptance of any bill of exchange '[*]' to be afterwards written thereon:—

(2) the stamp on any promissory note signed by or in behalf of the maker which has not been made use of in any manner whatever or delivered out of his hands:

(3) the stamp used or intended to be used for any '[such]' bill of exchange, '[*]' or promissory note signed by, or on behalf of, the drawer thereof, but which from any omission or error has been spoiled or rendered useless, although the same, being a bill of exchange '[*]', may have been presented for acceptance or accepted or endorsed, or, being a promissory note, may have been delivered to the payee: provided that another completed and duly stamped bill of exchange, '[*]' or promissory note is produced identical in every particular, except in the correction of such omission or error as aforesaid, with the spoiled bill, '[*]' or note:

(d) the stamp used for an instrument executed by any party thereto which—

(1) has been afterwards found to be absolutely void in law from the beginning:

(2) has been afterwards found unfit by reason of any error or mistake therein, for * the purpose originally intended:

(3) by reason of the death of any person by whom it is necessary that it should be executed, without having executed the same, or of the refusal of any such person to execute the same, cannot be completed so as to effect the intended transaction in the form proposed:

(4) for want of the execution thereof by some material party, and his inability or refusal to sign the same, is in fact incomplete and insufficient for the purpose for which it was intended:

(5) by reason of the refusal of any person to act under the same, or to advance any money intended to be thereby secured, or by the refusal or non-ac-

ceptance of any office thereby granted, totally fails of the intended purpose:

- (6) becomes useless in consequence of the transaction intended to be thereby effected being effected by some other instrument between the same parties and bearing a stamp of not less value:
- (7) is deficient in value and the transaction intended to be thereby effected had been effected by some other instrument between the same parties and bearing a stamp of not less value:
- (8) is inadvertently and undesignedly spoiled and in lieu whereof another instrument made between the same parties and for the same purpose is executed and duly stamped:

Provided that, in the case of an executed instrument, no legal proceeding has been commenced in which the instrument could or would have been given or offered in evidence and that the instrument is given up to be cancelled.

EXPLANATION.—The certificate of the Collector under section 32 that the full duty with which an instrument is chargeable has been paid is an impressed stamp within the meaning of this section.

50. The application for relief under section 49 shall be made within the following periods, that is to say,—

Application for relief
under section 49 when
to be made.

(1) in the cases mentioned in clause (d) (5), within two months of the date of the instrument:

(2) in the case of stamped paper on which no instrument has been executed by any of the parties thereto, within six months after the stamp has been spoiled:

(3) in the case of a stamped paper in which an instrument has been executed by any of the parties thereto, within six months after the date of the instrument, or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed:

Provided that,—

(a) when the spoiled instrument has been for sufficient reasons sent out of the State, the application may be made within six months after it has been received back in the State:

(b) when, from unavoidable circumstances, any instrument for which another instrument has been substituted cannot be given up to be cancelled within the aforesaid period, the application may be made within six months after the date of execution of the substituted instrument.

51. The Revenue Minister or the Collector if empowered by the Revenue Minister in this behalf may, without limit of time, make allowance for stamped papers used for printed forms of instruments by any banker or by any incorporated company or other body corporate, if for any sufficient reason such forms have ceased to be required by the said banker, company or body corporate, provided that such authority is satisfied that the duty in respect of such stamped papers has been duly paid.

52. (a) When any person has inadvertently used, for an instrument chargeable with duty, a stamp of a description other than that prescribed for such instrument by the rules made under this Act, or a stamp of greater value than was necessary, or has inadvertently used any stamp for an instrument not chargeable with any duty; or

(b) when any stamp used for an instrument has been inadvertently rendered useless under section 15, owing to such instrument having been written in contravention of the provisions of section 13;

the Collector may, on application made within six months after the date of the instrument, or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, and upon the instrument, if chargeable with duty, being re-stamped with the proper duty, cancel and allow as spoiled the stamp so misused or rendered useless.

53. In any case in which allowance is made for spoiled or misused stamps, the Collector may give in lieu thereof—

- (a) other stamps of the same description and value; or,
- (b) if required and he thinks fit, stamps of any other description to the same amount in value; or,
- (c) at his discretion, the same value in money, deducting ¹[two annas] for each rupee or fraction of a rupee.

54. When any person is possessed of a stamp or stamps which have not been spoiled or rendered unfit or useless for the purpose intended, but for which he has no immediate use, the Collector shall repay to such person the value of such stamp or stamps in money, deducting ¹[two annas] for each rupee or portion of a rupee, upon such person delivering up the same

¹Substituted "anna" for one anna by Act XX of 1989—Notification No. 38-L/89 published in the Government Gazette dated 8th Poh 1989.

to be cancelled, and proving to the Collector's satisfaction—

(a) that such stamp or stamps were purchased by such person with a *bona fide* intention to use them; and

(b) that he has paid the full price thereof; and

(c) that they were so purchased within the period of six months next preceding the date on which they were so delivered:

Provided that, where the person is a licensed vendor of stamps, the collector may, if he thinks fit, make the repayment of the sum actually paid by the vendor without any such deduction as aforesaid.

55. When any duly stamped debenture is renewed by the issue of a new debenture in the

Allowance on renewal
of certain debentures.

same terms, the Collector shall, upon application, made within one month, repay to

the person issuing such debenture, the value of the stamp on the original or on the new debenture, whichever shall be less:

Provided that the original debenture is produced before the Collector and cancelled by him in such manner as ¹[the Government] may direct.

EXPLANATION.—A debenture shall be deemed to be renewed in the same terms within the meaning of this section notwithstanding the following changes:—

(a) the issue of two or more debentures in place of one original debenture, the total amount secured being the same;

(b) the issue of one debenture in place of two or more original debentures, the total amount secured being the same;

(c) the substitution of the name of the holder at the time of renewal for the name of the original holders; and

(d) the alteration of the rate of interest or the dates of payment thereof.

CHAPTER VI.

REFERENCE AND REVISION.

56. (1) The powers exercisable by a Collector under

Control of [Government]
and statement of case
to Revenue Minister.

Chapter IV and Chapter V and under clause (a) of the first proviso to section 26 shall in all cases be subject to the control of

the ²[Government].

(2) If any Collector, acting under section 31, section 40 or section 41, feels doubt as to the amount of duty with which

¹See footnote under section 9.

²Substituted for "Revenue Minister" in section 56(1) vide Act X of 1996 published in the Government Gazette dated 15th Bhadon 1996.

any instrument is chargeable, he may draw up a statement of the case, and refer it, with his own opinion thereon, for the decision of the Revenue Minister.

(3) Such authority shall consider the case and send a copy of its decision to the Collector, who shall proceed to assess and charge the duty (if any) in conformity with such decision.

57. The Revenue Minister may state any case referred to him under section 56, sub-section (2), or otherwise coming to his notice, and refer such case, with his own opinion thereon, to the High Court.

Statement of case by Revenue Minister to High Court.

58. If the High Court is not satisfied, that the statements contained in the case are sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Revenue authority by which it was stated, to make such additions thereto or alterations therein as the Court may direct in that behalf.

Power of High Court to call for further particulars as to case stated.

59. (1) The High Court, upon the hearing of any such case, shall decide the questions raised thereby, and shall deliver its judgment thereon containing the grounds on which such decision is founded.

Procedure in disposing of case stated.

(2) The Court shall send to the Revenue authority by which the case was stated, a copy of such judgment under the seal of the Court and the signature of the Registrar; and the Revenue authority shall, on receiving such copy, dispose of the case conformably to such judgment.

60. (1) If any Court, other than a Court mentioned in section 57, feels doubt as to the amount of duty to be paid in respect of any instrument under proviso (a) to section 35, the Judge may draw up a statement of the case and refer it, with his own opinion thereon, for the decision of the High Court to which, if he were the Revenue Minister he would, under section 57, refer the same.

Statement of case by other Courts to High Court

(2) Such Court shall deal with the case as if it had been referred under section 57, and send a copy of its judgment under the seal of the Court and the signature of the Registrar to the Revenue Minister and another like copy to the Judge making the reference, who shall, on receiving such copy, dispose of the case conformably to such judgment.

(3) References made under sub-section (1), when made by a Court subordinate to a District Court, shall be made through the District Court, and, when made by any subordinate Revenue Court, shall be made through the Court imme-

diately superior.

61. (1) When any Court in the exercise of its civil or revenue jurisdiction or any Criminal Court in any proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, makes any order admitting any instrument in evidence as duly stamped or as not requiring a stamp, or upon payment of duty and a penalty under section 35, the Court to which appeals lie from, or references are made by, such first-mentioned Court may, of its own motion or on the application of the Collector, take such order into consideration.

Revision of certain decisions of Courts regarding the sufficiency of stamps.

(2) If such Court, after such consideration, is of opinion that such instrument should not have been admitted in evidence without the payment of duty and, penalty under section 35, or without the payment of a higher duty and penalty than those paid, it may record a declaration to that effect, and determine the amount of duty with which such instrument is chargeable, and may require any person in whose possession or power such instrument then is, to produce the same, and may impound the same when produced.

(3) When any declaration has been recorded under subsection (2) the Court recording the same shall send a copy thereof to the Collector, and, where the instrument to which it relates has been impounded or is otherwise in the possession of such Court, shall also send him such instrument.

(4) The Collector may thereupon, notwithstanding anything contained in the order admitting such instrument in evidence, or in any certificate granted under section 42, or in section 43, prosecute any person for any offence against the stamp-law which the Collector considers him to have committed in respect of such instrument:

Provided that—

(a) no such prosecution shall be instituted where the amount (including duty and penalty) which, according to the determination of such Court, was payable in respect of the instrument under section 35, is paid to the Collector, unless he thinks that the offence was committed with an intention of evading payment of the proper duty;

(b) except for the purposes of such prosecution, no declaration made under this section shall affect the validity of any order admitting any instrument in evidence, or of any certificate granted under section 42.

(5) Any other order made by a Court under the provisions of this Act shall be appealable in the ordinary way.

CHAPTER VII.

CRIMINAL OFFENCES AND PROCEDURE.

Penalty for executing,
etc., instrument not
duly stamped.

62. (1) Any Person—

(a) drawing, making, issuing, endorsing or transferring, or signing otherwise than as a witness, or presenting for acceptance or payment, or accepting, paying or receiving payment of, or in any manner negotiating, any bill of exchange ¹[*] ¹[payable otherwise than on demand] or promissory note without the same being duly stamped; or

(b) executing or signing otherwise than as a witness any other instrument chargeable with duty without the same being duly stamped; or

(c) voting or attempting to vote under any proxy not duly stamped;

shall for every such offence be punishable with fine which may extend to one hundred rupees or ten times the amount of the deficiency where this exceeds one hundred rupees.

Illustrations.

(1) If Hundi which ought to have been executed on a two annas stamp paper is executed on a one anna stamp paper, the fine may extend to rupees one hundred.

(2) If a conveyance which ought to have been executed on a stamped paper of Rs. 500 is executed on a stamped paper of Rs. 300 the fine may extend to Rs. 2,000.

Provided that, when any penalty has been paid in respect of any instrument under section 35, section 40 or section 61, the amount of such penalty shall be allowed in reduction of the fine (if any) subsequently imposed under this section in respect of the same instrument upon the person who paid such penalty.

(2) If a share-warrant is issued without being duly stamped, the company issuing the same, and also every person who, at the time when it is issued, is the managing director or secretary or other principal officer of the company, shall be punishable with fine which may extend to five hundred rupees.

63. Any person required by section 12 to cancel an adhesive stamp and failing to cancel such stamp in manner prescribed by that section, shall be punishable with fine which may extend to one hundred rupees.

Penalty for failure to
cancel adhesive stamp.

Penalty for omission to comply with provisions of section 27.

64. Any person who, with intent to defraud the Government,—

(a) executes any instrument in which all the facts and circumstances required by section 27 to be set forth in such instrument are not fully and truly set forth; or,

(b) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all such facts and circumstances; or,

(c) does any other act calculated to deprive the Government of any duty or penalty under this Act; shall be punishable with fine which may extend to five thousand rupees.

Penalty for refusal to give receipt, and for device to evade duty on receipts.

65. Any person who,—

(a) being required under section 30 to give a receipt, refuses or neglects to give the same; or

(b) with intent to defraud the Government of any duty, upon a payment of money or delivery of property exceeding twenty rupees in amount or value, gives a receipt for an amount or value not exceeding twenty rupees, or separates or divides the money or property paid or delivered;

shall be punishable with fine which may extend to one hundred rupees.

Penalty for not making out policy, or making one not duly stamped.

66. Any person who—

(a) receives, or takes credit for, any premium or consideration for any contract of insurance and does not, within one month after receiving, or taking credit for, such premium or consideration, make out and execute a duly stamped policy of such insurance; or

(b) makes, executes or delivers out any policy which is not duly stamped, or pays or allows in account, or agrees to pay or allows in account, any money upon, or in respect of, any such policy;

shall be punishable with fine which may extend to two hundred rupees.

67. Any person drawing or executing a bill of exchange

Penalty for not drawing full number of bills or marine policies purporting to be in sets.

¹[payable otherwise than on demand] or a policy of marine insurance purporting to be drawn or executed in a set of two or

¹Inserted by Act XI of 1993 published in the Government Gazette dated 26th Maghar 1993 words within brackets in section 67.

more, and not at the same time drawing or executing on paper duly stamped the whole number of bills or policies of which such bill or policy purports the set to consist, shall be punishable with fine which may extend to one thousand rupees.

Penalty for post-dating bills, and for other devices to defraud the revenue.

68. Any person who—

(a) with intent to defraud the Government of duty, draws, makes or issues any bill of exchange or promissory note bearing a date subsequent to that on which such bill or note is actually drawn or made; or

(b) knowing that such bill or note has been so post-dated, endorses, transfers, presents for acceptance or payment, or accepts, pays or receives payment of, such bill or note, or in any manner negotiates the same; or,

(c) with the like intent, practises or is concerned in any act, contrivance or device not specially provided for by this Act or any other law for the time being in force;

shall be punishable with fine which may extend to one thousand rupees.

Penalty for breach of rule relating to sale of stamps and for unauthorised sale.

69. (a) Any person appointed to sell stamps who disobeys any rule made under section 74; and

(b) any person not so appointed who sells or offers for sale any stamp (other than one-anna or half an anna adhesive stamp);

shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees, or with both.

70. (1) No prosecution in respect of any offence punishable under this Act or the law relating to stamps heretofore in force shall be instituted without the sanction of the Collector or such other officer as ¹[the Government] generally, or the Collector specially, authorises in that behalf.

(2) The ²[Government] or any officer generally or specially authorised by it in this behalf, may stay any such prosecution or compound any such offence.

(3) The amount of any such composition shall be recoverable in the manner provided by section 48.

71. No Magistrate other than a Magistrate whose powers are not less than those of a Magistrate of the second class, shall try any offence under this Act.

Jurisdiction of Magistrates.

¹See footnote under section 9.

²Substituted for "Revenue Minister" in section 70(2) *vide* Act X of 1996 published in the Government Gazette dated 15th Bhadon 1996

72. Every such offence committed in respect of any instrument may be tried in any district in which such instrument is found as well as in any district in which such offence might be tried under the Code of Criminal Procedure for the time being in force.

Place of trial.

CHAPTER VIII.

SUPPLEMENTAL PROVISIONS.

73. Every public officer having in his custody any registers, books, records, papers, documents or proceedings, the inspection whereof may tend to secure any duty, or to prove or lead to the discovery of any fraud or omission in relation to any duty, shall at all reasonable times permit any person authorised in writing by the Collector to inspect for such purpose the registers, books, papers, documents and proceedings, and to take such notes and extracts as he may deem necessary, without fee or charge.

Books etc., to be open to inspection.

74. (1) The Government shall appoint stamp vendors in every district and town.

(2) Every person wishing to sell stamps shall apply (for a licence for that purpose. The stamp duty payable on such application shall be five rupees, and no licence shall be in force for more than one year.

(3) The Government shall give a commission ¹[at the sanctioned rates for the time being in force] on the face value of stamps to stamp vendors.

(4) The Government shall from time to time make rules and directions for the guidance of stamp vendors.

(5) No stamp vendor shall demand from a buyer more than the face value of the stamp sought to be bought.

²(6) Omitted.

75. ³[The Government] may make rules to carry out generally the purposes of this Act, and may by such rules prescribe the fines, which shall in no case exceed five hundred rupees, to be incurred on breach thereof.

Power to make rules generally to carry out Act.

76. (1) All rules made under this Act, shall be published in the Government Gazette.

Publication of rules

¹Substituted for the words "five per centum" by Notification No. 1-C(1980) dated 8th June, 1923, published in the Government Gazette dated 26th Har 1980 and the amendment to take effect from the date of commencement of the Stamp Act.

²Omitted by Notification No. 10-L/1982 published in the Government Gazette dated 9th Maghar 1982.

³See footnote under section 9.

(2) All rules published as required by this section shall, upon such publication, have effect as if enacted by this Act.

76-A. ¹[The Government] may by notification in the Government Gazette delegate ²[all or any of the powers vested in it under sections 33 (3), 45 (1) and (2), 56 (1), 70 (1) and (2), 74 and 78 to such officer or authority as may be specified in the notification].

77. Nothing in this Act contained shall be deemed to affect the duties chargeable under any enactment for the time being in force relating to court-fees.

78 ¹[The Government] shall make provision for the sale of translations of this Act in the principal vernacular languages of the territories administered by it at a price not exceeding four annas per copy.

79. Omitted.

SCHEDULE I.

STAMP-DUTY ON INSTRUMENTS.

(See section 3).

Description of Instrument.	Proper Stamp-duty.
1. ACKNOWLEDGMENT of a debt exceeding twenty rupees in amount or value, written or signed by, or on behalf of, a debtor in order to supply evidence of such debt in any book (other than a banker's pass-book) or on a separate piece of paper when such book or a paper is left in the creditor's possession ; provided that such acknowledgment does not contain any promise to pay the debt or any stipulation to pay interest or to deliver any goods or other property.	One anna.
2. ADMINISTRATION-BOND , including a bond given under section 78 of the Probate and Administration Act, or section 9 or section 10 of the Succession Certificate Act,— (a) where the amount does not exceed Rs. 1,000.	The same duty as a Bond (No. 15) for such amount.

¹See footnote under section 9.

²In section 76-A words etc. at the end within brackets are substituted for clause (a) and (b) after deletion of colon and dash *vide* Act X of 1996 published in the Government Gazette dated 15th Bhadon 1996.

Description of Instrument.	Proper Stamp-duty.
(b) in any other case	¹ [Ten rupees].
3. ADOPTION-DEED, that is to say, any instrument (other than a will) recording an adoption or conferring or purporting to confer an authority to adopt.	¹ [Twenty rupees].
ADVOCATE See Entry as an Advocate (No. 30).	
4. ² [AFFIDAVIT, including an affirmation or declaration in the case of persons by law allowed to affirm or declare instead of swearing.	
(1) For the immediate purpose of being filed or used in any Court or before the officer of any Court ; or	One rupee.
(2) In other cases	Two rupees.
<i>Exemption.</i>	
Affidavit or declaration in writing when made for the sole purpose of enabling any person to receive any pension or charitable allowance.]	
5. AGREEMENT OR MEMORANDUM OF AN AGREEMENT.—	
(a) if relating to the sale of a bill of exchange.	¹ [Four annas.]
(b) if relating to the sale of a Government security, or share in an incorporated company or other body corporate.	Subject to a maximum of ¹ [fifteen rupees], ¹ [two annas] for every Rs. 10,000 or part thereof of the value of the security or share.
(c) if not otherwise provided for—	¹ [One rupee.]

¹Substituted by Notification No. 11-L/86 published in the Government Gazette dated 28th Maghar 1986.

²Recast by No. Act XX of 1989—Notification No. 38-L/89, published in the Government Gazette dated 8th Poh 1989.

Description of Instrument.	Proper Stamp-duty.
<p style="text-align: center;">Exemptions.</p> <p>Agreement or memorandum of an agreement—</p> <p>(a) for or relating to the sale of goods or merchandise exclusively, not being a NOTE OR MEMORANDUM chargeable under No. 43 ;</p> <p>(b) made in the form of tenders to the Government for or relating to any loan.</p> <p>AGREEMENT TO LEASE. See Lease (No. 35).</p> <p>¹[6. AGREEMENT RELATING TO DEPOSIT OF TITLE-DEEDS, PAWN OR PLEDGE that is to say, any instrument evidencing an agreement relating to—</p> <p>(1) the deposit of title-deeds or instruments constituting or being evidence of the title to any property whatever (other than a marketable security), or</p> <p>(2) the pawn or pledge of movable property,</p> <p>where such deposit, pawn or pledge has been made by way of security for the repayment of money advanced or to be advanced by way of loan or an existing or future debt—</p> <p>(a) If such loan or debt is re-payable on demand or more than three months from the date of the instrument evidencing the agreement—</p>	

¹Article 6 substituted *vide* Notification No. 11-L/86 published in the Government Gazette dated 28th Maghar 1986

Description of Instrument				Proper Stamp-duty.		
				If drawn singly.	If drawn in set of two, for each part of the set.	If drawn in set of three, for each part of the set.
			Rs.	Rs. A. P.	Rs. A. P.	Rs. A. P.
(i) when the amount of the loan or debt does not exceed			200	0 4 6	0 3 0	0 1 6
(ii) when it exceeds Rs. 200 but does not exceed			400	0 9 0	0 4 6	0 3 0
Do.	400	do.	600	0 13 6	0 7 6	0 4 6
Do.	600	do.	800	1 2 0	0 9 0	0 6 0
Do.	800	do.	1,000	1 6 6	0 12 0	0 7 6
Do.	1,000	do.	1,200	1 11 0	0 13 6	0 9 0
Do.	1,200	do.	1,600	2 4 0	1 2 0	0 12 0
Do.	1,600	do.	2,500	3 6 0	1 11 0	1 2 0
Do.	2,500	do.	5,000	06 12 0	3 6 0	2 4 0
Do.	5,000	do.	7,500	1 2 0	5 1 0	3 6 0
Do.	7,500	do.	10,000	13 8 0	6 12 0	4 8 0
Do.	10,000	do.	15,000	20 4 0	10 2 0	6 12 0
Do.	15,000	do.	20,000	27 0 0	13 8 0	9 0 0
Do.	20,000	do.	25,000	33 12 0	16 14 0	11 4 0
Do.	25,000	do.	30,000	40 8 0	20 4 0	13 8 0
and for every additional Rs. 10,000 or part thereof in excess of Rs. 30,000				13 8 0	6 12 0	4 8 0
(b) If such loan or debt is re-payable not more than three months from the date of such instrument.				Half the duty payable on a loan or debt under clause (a) (i) or clause (a) (ii) for the amount secured.		

Description of Instrument.	Proper Stamp-duty.
<i>Exemption.</i>	
Instrument of pawn or pledge of goods if unattested.]	
7. APPOINTMENT IN EXECUTION OF A POWER, whether of trustees or of property, movable or immovable, where made by any writing not being a will.	¹[Twenty five rupees].
8. APPRAISEMENT OR VALUATION made otherwise than under an order of the Court in the course of a suit—	
(a) Where the amount does not exceed Rs. 1,000;	The same duty as a Bond (No. 15) for such amount.
(b) In any other case	¹[Ten rupees.]
<i>Exemptions.</i>	
(a) Appraisement or valuation made for the information of one party only, and not being in any manner obligatory between parties either by agreement or operation of law.	
(b) Appraisement of crops for the purpose of ascertaining the amount to be given to a landlord as rent.	
9. APPRENTICESHIP-DEED, including every writing relating to the service or tuition of any apprentice, clerk or servant placed with any master to learn any profession, trade or employment.	Five rupees.
<i>Exemption.</i>	
Instruments of apprenticeship by which a person is apprenticed by or at the charge of any public charity.	
¹10. ARTICLES OF ASSOCIATION OF A COMPANY—	
(a) When the authorised capital of the Company does not exceed one lakh ;	Twenty five rupees.

¹Substituted by Notification No. 11-L/86 published in the Government Gazette dated 28th Maghar 1986.

²Article 10 substituted by Notification No. 11-L/86 published in the Government Gazette dated 28th Maghar 1986.

Description of Instrument.	Proper Stamp-duty.
(b) In other cases.	Fifty rupees.
<i>Exemption.</i>	
Articles of any association not formed for profit and registered under section 26 of the Companies Act, 1977.	
See also Memorandum of Association of a Company (No. 39).	
11. ASSIGNMENT. See Conveyance (No. 23), Transfer No. 62), and Transfer of lease No. 63), as the case may be.	
AUTHORITY TO ADOPT. See Adoption deed (No. 3).	
¹ [12. AWARD, that is to any, any decision in writing by an arbitrator or umpire not being an award directing a partition, on a reference made otherwise than by an order of the Court in the course of a suit—	
(a) Where the amount or value of the property to which the award relates, as set forth in such award, does not exceed Rs. 1,000.	The same duty as a Bond (No. 15) for such amount.
(b) If it exceeds Rs. 1,000 but does not exceed Rs. 5,000.	Seven rupees eight annas.
and for every additional Rs. 1,000 or part thereof in excess of Rs. 5,000.	Eight annas subject to a maximum of fifty rupees.]
13. BILL OF EXCHANGE (as defined by section 2(2) ² [*] not being a Bond, banknote or currency note—	
² (a) Deleted.	
(b) Where payable otherwise than on demand but not more than one year after date or sight—	

¹Article 12 substituted by Notification No. 11-L/86 published in the Government Gazette dated 28th Maghar 1986.

²The word and figure "and (3)" and clause (a) in Article 13 deleted by Act XI of 1993 published in the Government Gazette dated 26th Maghar 1993.

Description of Instrument.	Proper Stamp-duty.			
	If drawn singly.	If drawn in set of two, for each part of the set.	If drawn in set of three, for each part of the set.	
	Rs.	Rs. A. P.	Rs. A. P.	Rs. A. P.
If the amount of the bill or note does not exceed 200		0 3 0	0 2 0	0 1 0
If it exceeds Rs. 200 and does not exceed 400		0 6 0	0 3 0	0 2 0
Do. 400 do. 600		0 9 0	0 5 0	0 3 0
Do. 600 do. 800		0 12 0	0 6 0	0 4 0
Do. 800 do. 1,000		0 15 0	0 8 0	0 5 0
Do. 1,000 do. 1,200		1 0 0	0 9 0	0 6 0
Do. 1,200 do. 1,600		1 8 0	0 12 0	0 8 0
Do. 1,600 do. 2,500		2 4 0	1 2 0	0 12 0
Do. 2,500 do. 5,000		4 8 0	2 4 0	1 8 0
Do. 5,000 do. 7,500		6 12 0	3 6 0	2 4 0
Do. 7,500 do. 10,000		9 0 0	4 8 0	3 0 0
Do. 10,000 do. 15,000		13 8 0	6 12 0	4 8 0
Do. 15,000 do. 20,000		18 0 0	9 0 0	6 0 0
Do. 20,000 do. 25,000		22 8 0	11 4 0	7 8 0
Do. 25,000 do. 30,000		27 0 0	13 8 0	9 0 0
and for every additional Rs. 10,000 or part thereof in excess of Rs. 30,000.		9 0 0	4 8 0	3 0 0
(e) where payable at more than one year after date or sight.	The same duty as a Bond (No. 15) for the same amount.			
14. Omitted.				

Description of Instrument.	Proper Stamp-duty.
15. BOND as defined by section 2 (5) not being a DEBENTURE (No. 27) and not being otherwise provided for by this Act, or by the Court-fees Act,—	
where the amount or value secured does not exceed Rs. 10 ;	¹ [Two annas].
where it exceeds Rs. 10 and does not exceed Rs. 50	¹ [Four annas].
Do. 50 do. 100	¹ [Eight annas].
Do. 100 do. 200	¹ [One Rupee].
Do. 200 do. 300	¹ [One rupee fourteen annas].
Do. 300 do. 400	¹ [Two rupees eight annas].
Do. 400 do. 500	¹ [Three rupees two annas].
Do. 500 do. 600	¹ [Four rupees eight annas].
Do. 600 do. 700	¹ [Five rupees four annas].
Do. 700 do. 800	¹ [Six rupees].
Do. 800 do. 900	¹ [Six rupees twelve annas].
Do. 900 do. 1,000	¹ [Seven rupees eight annas].
and for every Rs. 500 or part thereof in excess of Rs. 1,000.	¹ [Three rupees twelve annas].
See ADMINISTRATION BOND (No. 2), CUSTOMS BOND (No. 26), INDEMNITY-BOND (No. 34), SECURITY BOND (No. 57).	
<i>Exemption.</i>	
Bond, when executed by—	
any person for the purpose of guaranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital or any other object of public utility shall not be less than a specified sum per mensem.	

¹Substituted by Notification No. 11-L/86 published in the Government Gazette dated 82th Maghar 1986.

Description of Instrument.	Proper Stamp-duty.
16. OMITTED.	
<p>17. CANCELLATION—Instrument of (including any instrument by which any instrument previously executed is cancelled), if attested and not otherwise provided for.</p> <p><i>See also</i> Release (No. 55), Revocation of settlement (No. 58-B), Surrender of lease (No. 61), Revocation of Trust (No 64-B).</p>	¹ [Seven rupees eight annas].
18. CERTIFICATE OF SALE (in respect of each property put up as a separate lot and sold) granted to the purchaser of any property sold by public auction by a Civil or Revenue Court, or Collector or other Revenue officer.	The same duty as a conveyance (No. 23) for a consideration equal to the amount of purchase money.
<p>19. CERTIFICATE OR OTHER DOCUMENT evidencing the right or title of the holder thereof, or any other person, (a) either to any shares, scrip or stock in or of any incorporated company or other body corporate, or to become proprietor of shares, scrip or stock in or of any such company or body (b) to a horse or ²[mule, camel, buffalo, bullock or cow] granted by its seller to the buyer.</p> <p><i>See also</i> Letter of Allotment share (No. 36).</p>	Eight annas.
20. OMITTED,	
³ 21. OMITTED.	
22. COMPOSITION-DEED, that is to say, any instrument executed by a debtor whereby he conveys his property for the benefit of his creditors, or whereby payment of a composition or dividend on their debts is secured to the creditors, or whereby	¹ [Twelve rupees eight annas].

¹Substituted by Notification No. 11-L/86 published in the Government Gazette dated 28th Maghar 1986.

²Inserted by Act XX of 1989—Notification No. 38-L/89 published in the Government Gazette dated 8th Poh 1989.

³Article 21 deleted by Act XI of 1993 published in the Government Gazette dated 26th hMaghar 1993.

Description of Instrument,	Proper Stamp-duty.
provision is made for the continuance of the debtor's business, under the supervision of inspectors or under letters of licence for the benefit his creditors.	
23. CONVEYANCE as defined by section 2 (10), not being a transfer charged or exempted under No. 62,—	
where the amount or value of the consideration for such conveyance as set forth therein does not exceed Rs. 50 ;	¹ [Twelve annas].
where it exceeds Rs. 50 but does not exceeds Rs. 100	¹ [One rupee eight annas].
Do. 100 do. 200	¹ [Three rupees].
Do. 200 do. 300	¹ [Four rupees eight annas].
Do. 300 do. 400	¹ [Six rupees].
Do. 400 do. 500	¹ [Seven rupees eight annas,].
Do. 500 do. 600	¹ [Nine rupees].
Do. 600 do. 700	¹ [Ten rupees eight annas].
Do. 700 do. 800	¹ [Twelve rupees],
Do. 800 do. 900	¹ [Thirteen rupees eight annas]
Do. 900 do. 1,000	¹ [Fifteen rupees].
and for every Rs. 500 or part thereof in excess of Rs. 1,000.	¹ [Seven rupees eight annas]. ✓
² [Provided that a conveyance of immovable property situated within a Municipality shall be chargeable with a stamp duty at double the rate hereinbefore provided].	
<i>Exemption.</i>	
Assignment of copyright by entry made under the Copyright Act.	

¹Substituted by Notification No. 11-L/86 published in Government Gazette dated 28th Maghar 1986.

²Added by Notification No. 11-L/86 published in the Government Gazette dated 28th Maghar 1986.

Description of Instrument.	Proper Stamp-duty.
Co-PARTNERSHIP-DEED. See Partnership (No. 46).	
24. COPY OR EXTRACT certified to be a true copy or extract by or by order of any public officer and not chargeable under the law for the time being in force relating to court-fees—	
(i) If the original was not chargeable with duty or if the duty with which it was chargeable does not exceed one rupee ;	¹ [Twelve annas].
(ii) in any other case	¹ [One rupee eight annas].
<i>Exemptions.</i>	
(a) Copy of any paper which a public officer is expressly required by law to make or furnish for record in any public office or for any public purpose ;	
(b) Copy of, or extract from, any register relating to births, baptisms, namings, dedications, marriages, divorces, deaths, or burials.	
25. COUNTERPART OR DUPLICATE of any instrument chargeable with duty and in respect of which the proper duty has been paid,—	
(a) if the duty with which the original instrument is chargeable does not exceed one rupee ;	The same duty as is payable on the original.
(b) in any other case	¹ [One rupee eight annas].
<i>Exemption.</i>	
Counterpart of any lease granted to a cultivator when such lease is exempted from duty.	

¹Substituted by Notification No. 11-L/86 published in the Government Gazette dated 28th Maghar 1986.

Description of Instrument.	Proper Stamp-duty.
<p>26. CUSTOMS BOND—</p> <p>(a) where the amount does not exceed Rs. 1,000.</p> <p>(b) in any other case ..</p>	<p>The same duty as a Bond (No. 15) for such amount.</p> <p>¹[Ten rupees.]</p>
<p>27. DEBENTURE—(whether a mortgagage debenture or not) being a marketable security transferable—</p> <p>(a) by endorsement or by a separate instrument of transfer ;</p> <p>(b) by delivery ..</p>	<p>The same duty as Bond (No. 15) for the same amount.</p> <p>The same duty as a conveyance (No. 23) for a consideration equal to the face amount of the debenture.</p>
<p>EXPLANATION—The term 'Debenture' includes any interest coupons attached thereto, but the amount of such coupons shall not be included in estimating the duty.</p>	
<p style="text-align: center;"><i>Exemption.</i></p> <p>A debenture issued by an incorporated company or other body corporate in terms of a registered mortgage-deed, duly stamped in respect of the full amount of debentures to be issued thereunder, whereby the company or body borrowing makes over, in whole or in part, their property to trustees for the benefit of the debenture-holders: provided that the debentures so issued are expressed to be issued in terms of the said mortgage-deed.</p> <p><i>See also</i> Bond (No. 15) and sections 8 and 55.</p>	
<p>28. DELIVERY ORDER IN RESPECT OF GOODS, that is to say, any instrument entitling any person therein named, or his assigns or the holder thereof, to the delivery of any goods lying in any dock or port, or in any warehouse in which goods are stored or deposited on rent or hire, or upon any wharf, such instrument being signed by or on behalf of the owner of such goods upon the sale or transfer of the property therein, when such goods exceed in value twenty rupees.</p>	<p>One anna.</p>

¹Substituted by Notification No. 11-L/86 published in the Government Gazette dated 28th Maghar 1986.

Description of instrument.	Proper Stamp-duty.
DEPOSIT OF TITLE-DEEDS. See AGREEMENT relating to DEPOSIT OF TITLE-DEEDS PAWN OR PLEDGE (No. 6).	
DISSOLUTION OF PARTNERSHIP. See PARTNERSHIP (No. 46).	
29. DIVORCE —Instrument of, that is to say, any instrument by which any person effects the dissolution of his marriage.	¹ [Five rupees.]
DOWER —Instrument of. See SETTLEMENT (No. 58).	
DUPLICATE —See COUNTERPART (No. 25).	
30. ENTRY AS AN ADVOCATE OF THE HIGH COURT.	² [Seven hundred and fifty rupees.]
31. EXCHANGE OF PROPERTY —Instrument of, EXTRACT. See Copy (No. 24)	The same duty as a conveyance (No. 23) for a consideration equal to the value of the property of greatest value as set forth in such instrument.
32. FURTHER CHARGE —Instrument of, that is to say, any instrument imposing a further charge on mortgaged property—	
(a) when the original mortgage is one of the description referred to in clause (a) of Article No. 40 (that is, with possession);	The same duty as a conveyance (No. 23) for a consideration equal to the amount of the further charge secured by such instrument.
(b) when such mortgage is one of the description referred to in clause (b) of article No. 40 (that is, without possession) —	
(c) if at the time of execution of the instrument of further charge possession of the property is given or agreed to be given under such instrument;	The same duty as a conveyance (No. 23) for a consideration equal to the total amount of the charge including the original mort-

¹In article 29 "one rupee" replaced by "five rupees" vide Notification No. 11-L/86.

²Substituted by Notification No. 11-L/86 published in the Government Gazette dated 28th Maghar 1986. Originally the Stamp duty was Rs 200 which was raised to Rs. 500 vide Notification No. 1-L/81. By notification No. 11-L/86, it is further raised to the present duty.

Description of instrument.	Proper Stamp-duty.
(ii) it possession is not so given ..	<p>gage and any further charge already made less the duty already paid on such original mortgage and further charge.</p> <p>The same duty as a Bond (No. 15) for the amount of the further charge secured by such instrument.</p>
<p>33. GIFT—Instrument of, not being a SETTLEMENT (No. 58) or WILL OR TRANSFER (No. 62).</p>	<p>The same duty as a conveyance (No. 23) for a consideration equal to the value of the property as set forth in such instrument.</p>
<p>HIRING AGREEMENT or agreement for service. see AGREEMENT (No. 5).</p>	
34. INDEMINITY BOND ...	<p>The same duty as a security Bond (No. 57) for the same amount.</p>
<p>INSPECTORSHIP-DEED, see COMPOSITION-DEED (No. 22).</p>	
INSURANCE. see POLICY OF INSURANCE (No. 47).	
<p>35. LEASE, including an under lease or sub-lease and any agreement to let or sub-let—</p>	
(a) where by such lease the rent is fixed and no premium is paid or delivered	
(i) where the lease purports to be for a term of less than one year ;	<p>The same duty as Bond (No. 15) for the whole amount payable or deliverable under such lease.</p>
(ii) where the lease purports to be for a term of not less than one year but not more than three years :	<p>The same duty as a Bond (No. 15) for the amount or value of the average annual rent reserved.</p>
(iii) where the lease purports to be for a term in excess of three years ;	<p>The same duty as a conveyance (No. 23) for consideration equal to the amount or value of the average annual rent reserved.</p>

Description of Instrument.

Proper Stamp-duty.

35. LEASE—*continued*.

(iv) where the lease does not purport to be for any definite term;

The same duty as a conveyance (No. 23) for a consideration equal to the amount or value of the average annual rent which would be paid or delivered for the first ten years if the lease continued so long.

(v) where the lease purports to be in perpetuity;

The same duty as a conveyance No. 23) for a consideration equal to one fifth of the whole amount of rents which would be paid or delivered in respect of the first fifty years of the lease.

(b) where the lease is granted for a fine or premium or for money advanced and where no rent is reserved.

The same duty as a Conveyance (No. 23) for consideration equal to the amount or value of such fine or premium or advance as set forth in the lease.

(c) where the lease is granted for a fine or premium or for money advanced in addition to rent reserved.

The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of such fine or premium or advance as set forth in the lease, in addition to the duty which would have been payable on such lease if no fine or premium or advance had been paid or delivered:

Exemption.

Lease and its counterpart executed in the case of a cultivator and for the purposes of cultivation (including a lease of trees for the production of food or drink) without the payment or delivery of any fine or premium, when definite term is expressed, and such term does not exceed one year, or when the average annual rent reserved does not exceed one hundred rupees.

Provided that, in any case when an agreement to lease is stamped with the *ad valorem* stamp required for a lease, and a lease in pursuance of such agreement is subsequently executed, the duty on such lease shall not exceed eight annas.

Description of Instrument.	Proper Stamp-duty.
36. LETTER OF ALLOTMENT OF SHARES, in any company or proposed company, or in respect of any loan to be raised by any company or proposed company.	¹ ["Two annas,]
See also Certificate or other Document (No. 19).	
37. LETTER OF CREDIT, that is to say, any instrument by which one person authorises another to give credit to the person in whose favour it is drawn.	¹ ["Two annas.]
LETTER OF GUARANTEE, see Agreement (No. 5).	
38. LETTER OF LICENCE, that is to say, any agreement between a debtor and his creditors, that the latter shall, for a specified time, suspend their claims and allow the debtor to carry on business at his own discretion.	¹ [Twelve rupees eight annas.]
² [39. MEMORANDUM OF ASSOCIATION OF A COMPANY—	
(a) if accompanied by articles of association under section 17 of the Companies Act, 1977;	Thirty rupees.
(b) if not so accompanied ..	Eighty rupees.
<i>Exemption.</i>	
Memorandum of any association not formed for profit and registered under section 26 of the Companies Act, 1977.]	
40. MORTGAGE-DEED, not being an <i>Agreement relating to Deposit of Title-Deeds, Pawn or Pledge (No. 6), Mortgage of a Crop (No. 41) or Security-Bond (No. 57)</i> —	
(a) when possession of the property or any part of the property comprised in such deed is given by the mortgagor or agreed to be given ;	The same duty as a Conveyance (No 23) for a consideration equal to the amount secured by such deed.

¹Substituted by Notification No 11-L/86 published in Government Gazette dated 28th Maghar 1986.

²Article 39 substituted vide Notification No. 11-L/86 published in Government Gazette dated 28th Maghar 1986.

Description of Industries.	Proper Stamp-duty.
<p>40. MORTGAGE-DEED—(continued).</p> <p>(b) when possession is not given or agreed to be given as afore-said ;</p> <p><i>Explanation</i>—A mortgagor who gives to the mortgagee a power of attorney to collect rents or a lease of the property mortgaged or part thereof, is deemed to give possession within the meaning of this article.</p> <p>(c) when a collateral or auxiliary or additional or substituted security, or by way of further assurance for the above-mentioned purpose where the principal or primary security is duly stamped —</p> <p>for every sum secured not exceeding Rs. 1,000.</p> <p>and for every Rs. 1,000 or part thereof secured in excess of Rs. 1000.</p> <p><i>Exemption.</i></p> <p>Letter of hypothecation accompanying a bill of exchange</p>	<p>The same duty as a Bond (No. 15) for the amount secured by such deed.</p> <p>¹[Twelve annas.]</p> <p>Do.</p>
<p>41. MORTGAGE OF A CROP, including any instrument evidencing an agreement to secure the repayment of a loan made upon any mortgage of a crop, whether the crop is or is not in existence at the time of the mortgage—</p> <p>(a) when the loan is repayable not more than three months from the date of the instrument—</p> <p>for every sum secured not exceeding Rs. 200 ;</p> <p>and for every Rs. 200 or part thereof secured in excess of Rs. 200 ;</p>	<p>¹[One and a half anna.]</p> <p>Do.</p>

¹Substituted *vide* Notification No. 11-L/86 published in the Government Gazette dated 28th Maghar 1986.

Description of Instrument.	Proper Stamp-duty.
<p>41. MORTGAGE OF A CROP—<i>continued</i>.</p> <p>(b) when the loan is repayable more than three months, but not more than eighteen months, from the date of the instrument—</p> <p>for every sum secured not exceeding Rs. 100.</p> <p>and for Rs. 100 or part thereof secured in excess of Rs. 100.</p>	<p>¹[Three annas].</p> <p>Do.</p>
<p>42. NOTARIAL ACT, that is to say, any instrument, endorsement, note, attestation, certificate or entry not being a PROTEST (No. 50) made or signed by a Notary Public in the execution of the duties of his office, or by any other person lawfully acting as a Notary Public</p> <p>See also PROTEST OF BILL OR Note (No. 50).</p>	<p>¹[Two rupees.]</p>
<p>43. NOTE OR MEMORANDUM sent by a Broker or Agent to his principal intimating the purchase or sale on account of such principal—</p> <p>(a) of any goods exceeding in value twenty rupees.</p> <p>(b) of any stock or marketable security exceeding in value twenty rupees.</p>	<p>¹[Three annas.]</p> <p>Subject to a maximum of ¹[fifteen rupees,] ¹[two annas] for every Rs. 10,000 or part thereof of the value of the stock or security.</p>
<p>44. OMITTED—</p> <p>ORDER FOR THE PAYMENT OF MONEY.</p> <p>See BILL OF EXCHANGE (No. 13).</p>	
<p>²[45. PARTITION—Instrument of—as defined by section 2 (15).</p>	<p>The same duty as a Bond (No. 15) for the amount of</p>

¹Substituted by Notification No. 11-L/86 published in Government Gazette dated 28th Maghar 1986.

²Article 45 substituted vide Notification No. 11-L/86 published in Government Gazette dated 29th Maghar 1986. For duty chargeable on partition deeds relating to land see Council Order No. 388-C of 1938 (4-L/95) given at the end of this Schedule.

Description of Instrument.	Proper Stamp-duty.
45. PARTITION— <i>continued</i> .	<p data-bbox="1178 605 1775 762">the value of the separated share or shares of the property.</p> <p data-bbox="1168 802 1775 1304"><i>N. B.</i>—The largest share remaining after the property is partitioned (or if there are two or more shares of equal value and not smaller than any of the other shares than one of such equal shares) shall be deemed to be that from which the other shares are separated ;</p> <p data-bbox="1168 1351 1675 1404">Provided always that :—</p> <p data-bbox="1168 1451 1765 2141">(a) when an instrument of partition containing an agreement to divide property in severalty is executed and a partition is effected in pursuance of such agreement, the duty chargeable upon the instrument effecting such partition shall be reduced by the amount of duty paid in respect of the first instrument but shall not be less than twelve annas ;</p> <p data-bbox="1168 2188 1755 2643">(b) where land is held on Revenue Settlement for a period not exceeding thirty years and paying the full assessment, the value for the purpose of duty shall be calculated at not more than ten times the annual revenue ;</p> <p data-bbox="1168 2675 1755 2988">(c) where a final order for effecting a partition passed by any Revenue Authority or any Civil Court, or an award by an arbitrator directing a partition, is</p>

Description of Instrument.	Proper Stamp-duty.
45. PARTITION.— <i>concluded</i> .	stamped with the stamp required for an instrument of partition, and an instrument of partition in pursuance of such order or award is subsequently executed the duty on such instrument shall not exceed twelve annas].
46. PARTNERSHIP—	
A.—Instrument of ..	Ten rupees.
B.—Dissolution of ..	Five rupees.
PAWN OR PLEDGE—See <i>Agreement relating to Deposit of Title-deeds, Pawn or Pledge No. 6</i>).	
47. POLICY OF INSURANCE—	
A.—Omitted.	
B.—FIRE INSURANCE—and other classes of Insurance, not elsewhere included in this Article, covering goods, merchandise, personal effects, crops and other property against loss or damage.	
(1) in respect of an original policy—	
(i) when the sum insured does not exceed Rs. 5,000 ;	Eight annas.
(ii) in any other case ; and ..	One rupee.
(2) in respect of each receipt for any payment of a premium on any renewal of an original policy.	One-half of the duty payable in respect of the original policy in addition to the amount, if any, chargeable under No. 53.
C.—ACCIDENT AND SICKNESS INSURANCE—	
(a) against railway accident, valid for a single journey only.	One anna.

Description of Instrument.	Proper Stamp-duty.
<p style="text-align: center;"><i>Exemption.</i></p> <p>When issued to a passenger travelling by the intermediate or the third class in any railway.</p> <p>(b) in any other case—for maximum amount which may become payable in the case of any single accident or sickness where such amount does not exceed Rs. 1,000 and also where such amount exceeds Rs. 1,000 for every Rs. 1,000 or part thereof.</p> <p>(D.) LIFE-INSURANCE OR OTHER INSURANCE NOT SPECIFICALLY PROVIDED FOR, except such a RE-INSURANCE as is described in Division E of this article—</p> <p>for every sum insured not exceeding Rs. 1,000 and also for every Rs. 1,000 or part thereof in excess of Rs. 1,000.</p> <p>(i) if drawn singly ...</p> <p>(ii) if drawn in duplicate, for each part.</p> <p>E—RE-INSURANCE BY AN INSURANCE COMPANY, which has granted a POLICY of the nature specified in Division B, of this article with another company by way of indemnity or guarantee against the payment on the original insurance of a certain part of the sum insured thereby.</p>	<p>Two annas.</p> <p>Six annas.</p> <p>Three annas</p> <p>Three annas.</p> <p>one-quarter of the duty payable in respect of the original insurance but not less than one anna or more than one rupee.</p>
<p style="text-align: center;"><i>General Exemption.</i></p> <p>Letter of cover or engagement to issue a policy of insurance :</p> <p>Provided that, unless such letter or engagement bears the stamp prescribed by this Act for such policy, nothing shall be claimable thereunder, nor shall it be available for any purpose, except to compel the delivery of the policy therein mentioned.</p>	

Description of Instrument.	Proper Stamp-duty.
<p>48. POWER-OF-ATTORNEY as defined by section 2 (21), not being a PROXY (No. 52)—</p> <p>(a) when executed for the sole purpose of procuring the registration of one or more documents in relation to a single transaction or for admitting execution of one or more such documents ;</p> <p>(b) when authorising one person or more to act in a single transaction other than the case mentioned in clause (a) ;</p> <p>(c) when authorising not more than five persons to act jointly and severally in more than one transaction or generally ;</p> <p>(d) when authorising more than five but not more than ten persons to act jointly and severally in more than one transaction or generally ;</p> <p>(e) when given for consideration and authorising the attorney to sell any immovable property ;</p> <p>(f) in any other case</p> <p><i>Explanation</i>—For the purposes of this Article more persons than one when belonging to the same firm shall be deemed to be one person.</p> <p><i>Exemption.</i></p> <p>²A document whereby a claimant to have his name entered on an electoral roll or a person objecting to another person's name being brought on the electoral roll authorises another person to act for him].</p>	<p>¹[One rupee.]</p> <p>¹[Two rupees.]</p> <p>¹[Ten rupees.]</p> <p>¹[Twenty rupees.]</p> <p>The same duty as a Convey— ance (No 23) for the amount of the consideration.</p> <p>¹[Two rupees] for each person authorised</p> <p>N. B—The term “registra— tion” includes every opera— tion incidental to registra— tion under the Registration Act.</p>

¹ Substituted *vide* Notification No. 11-L/86 published in Government Gazette dated 28th Maghar 1986

² Exemption to Article 48 added by Act No. VII of 1994 published in Government Gazette dated 9th Baisakh 1995.

Description of Instrument.	Proper Stamp-duty
<p>¹[49. PROMISSORY NOTE as defined by section 2 (22)—</p> <p>(a) when payable on demand—</p> <p>(i) when the amount or value does not exceed Rs. 250.</p> <p>(ii) when the amount or value exceeds Rs. 250, but does not exceed Rs. 1,000 ;</p> <p>(iii) In any other case ...</p> <p>(b) when payable otherwise than on demand.</p>	<p>One anna.</p> <p>Two annas.</p> <p>Four annas.</p> <p>The same duty as a Bill of Exchange (No. 13) for the same amount payable otherwise than on demand].</p>
<p>50. PROTEST OF BILL OR NOTE, that is to say, any declaration in writing made by a Notary Public, or other person lawfully acting as such, attesting the dishonour of a Bill of exchange or promissory note.</p>	<p>²[Two rupees.]</p>
<p>51. Omitted.</p>	
<p>52. PROXY empowering any person to vote at any one election of the members of a district or local board or of a body of municipal commissioners, or at any one meeting of (a) members of an incorporated company or other body corporate whose stock or funds is or are divided into shares and transferable, (b) a local authority, or (c) proprietors, members or contributors to the funds of any institution.</p>	<p>²[Two annas].</p>
<p>53. RECEIPT as defined by section 2 (23) for any money or other property, the amount or value of which exceeds twenty rupees.</p>	<p>One anna.</p>

¹Article 49 substituted by Notification No. 11-L/86 published in the Government Gazette dated 28th Maghar 1986.

²Substituted by Notification No. 11-L/86 published in the Government Gazette dated 28th Maghar 1986.

Description of Instrument.	Proper Stamp-duty.
<p data-bbox="149 439 735 501">53. RECEIPT—(continued).</p> <p data-bbox="546 548 815 611"><i>Exemptions.</i></p> <p data-bbox="198 642 417 705">Receipt—</p> <ul style="list-style-type: none"> <li data-bbox="318 752 1212 1270">(a) endorsed on or contained in any instrument duly stamped, or exempted under the proviso to section 3 (instruments executed on behalf of the Government) acknowledging the receipt of the consideration-money therein expressed, or the receipt of any principal-money, interest or annuity, or other periodical payment thereby secured ; <li data-bbox="318 1317 1212 1426">(b) for any payment of money without consideration ; <li data-bbox="318 1473 1212 1630">(c) for any payment of rent by a cultivator on account of land assessed to Government revenue ; <li data-bbox="318 1677 1212 1928">(d) for pay or allowances by non-commissioned officers or soldiers of His Highness' Army or, when serving in such capacity, or by mounted police-constables ; <li data-bbox="318 1975 1212 2336">(e) given by holders of family-certificates in cases where the person from whose pay or allowances the sum comprised in the receipt has been assigned is a non-commissioned officer or soldier, and serving in such capacity ; <li data-bbox="318 2383 1212 2681">(f) for pensions or allowances by persons receiving such pensions or allowances in respect of their service as such non-commissioned officers or soldiers, and not serving the Government in any other capacity ; <li data-bbox="318 2728 1212 2869">(g) given by a headman or lambardar for land revenue or taxes collected by him ; <li data-bbox="318 2916 1212 2994">(h) given for money or securities for 	

Description of Instrument.	Proper Stamp-duty.
<i>Exemptions—continued.</i>	
money-deposited in the hands of any banker, to be accounted for :	
Provided that the same is not expressed to be received of, or by the hands of, any other than the person to whom the same is to be accounted for :	
Provided also that this exemption shall not extend to a receipt or acknowledgement for any sum paid or deposited for or upon a letter of allotment of a share, or in respect of a call upon any scrip or share of, or in any incorporated company or other body corporate or such proposed or intended company or body or in respect of a debenture being a marketable security.	
<i>See also POLICY OF INSURANCE No. 47-B (2).</i>	
54. RECONVEYANCE OF MORTGAGED PROPERTY—	
(a) if the consideration for which the property was mortgaged does not exceed Rs. 1,000 ;	The same duty as a conveyance (No. 23) for the amount of such consideration as set forth in the Reconveyance.
(b) in any other case ..	¹ [Fifteen rupees.]
55. RELEASE, that is to say any instrument (not being such a release as is provided for by section 23-A) whereby a person renounces a claim upon another person or against any specified property—	
(a) if the amount or value of the claim does not exceed Rs. 1,000.	The same duty as a Bond (No. 15) for such amount or value as set forth in the Release.
(b) in any other case	¹ [Seven rupees eight annas.]

¹Substituted by Notification No. 11-L/86 published in the Government Gazette dated 28th Maghar 1986.

Description of Instrument.	Proper Stamp-duty.
56. Omitted.	
<p>57. SECURITY-BOND OR MORTGAGE-DEED executed by way of security for the due execution of an office, or to account for money or other property received by virtue thereof or executed by a surety to secure the due performance of a contract,—</p> <p>(a) when the amount secured does not exceed ¹[Rs. 2,000]</p> <p>(b) in any other case ..</p> <p style="text-align: center;"><i>Ex mptions.</i></p> <p>Bond or other instrument, when executed—</p> <p>(a) by any person for the purpose of guaranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital or any other object of public utility shall not be less than a specified sum per mensem;</p> <p>(b) executed by persons taking advances under the agriculturists loans or by the sureties, as security for payment of such advances.</p> <p>(c) executed by officers of Government ²[and registered candidates for the posts of cashiers and treasurers] or their sureties to secure the due execution of an office or the due accounting for money or other property received by virtue thereof.</p> <p>³[(d) Executed by a guarantee in favour of the Board of Trustees under Dhan Devi Memorial Rajput Kanya Fund.]</p>	<p>The same duty as a Bond (No. 15) for the amount secured.</p> <p>¹[Rupees fifteen].</p>

¹Substituted by Act No. VII of 1994 published in the Government Gazette dated 9th Baisakh 1995.

²Inserted in clause (c) after the word "Government" by Council Order No. 70 dated 31st January 1935 Notification No. 12 L/91 published in the Government Gazette dated 10th Phagun 1991.

³Clause (d) inserted by Notification No. 22-L/89 published in the Government Gazette dated 31st Har 1989.

Description of Instrument.	Proper Stamp-duty.
¹ 57-A. Deleted.	
58. SETTLEMENT—	
<p>A.—INSTRUMENT OF (including a deed of dower).</p> <p style="text-align: center;"><i>Exemptions.</i></p> <p>Deed of dower executed on the occasion of marriage between Mohammedans.</p> <p>B. REVOCATION OF—</p> <p style="text-align: center;"><i>See also TRUST (No. 64).</i></p> <p>59. SHARE WARRANTS to bearer issued under the Companies Act.</p> <p style="text-align: center;"><i>Exemption.</i></p> <p>Share warrant when issued by a company under the Companies Act to have effect only upon payment, as composition for that duty, to the Collector of stamp-</p>	<p>The same duty as a Bond (No. 15) for a sum equal to the amount or value of the property settled as set forth in such settlement:</p> <p>Provided that where an agreement to settle is stamped with the stamp required for an instrument of settlement and an instrument of settlement in pursuance of such agreement is subsequently executed, the duty on such instrument shall not exceed ²[twelve annas.]</p> <p>The same duty as a Bond (No. 15) for a sum equal to the amount or value of the property concerned as set forth in the Instrument of Revocation but not exceeding ²[fifteen rupees.]</p> <p>One and a half times of the duty payable on a Conveyance (No. 23) for a consideration equal to the nominal amount of the shares specified in the warrant.</p>

¹Article 57-A deleted vide Act No. VII of 1991 published in Government Gazette dated 9th Baisakh 1995.

²Substituted by Notification No. 11-L/86 published in the Government Gazette dated 28th Maghar 1986.

Description of Instrument.	Proper Stamp-duty.
<p>revenue, of—</p> <p>(a) one and a half per centum of the whole subscribed capital of the company ; or</p> <p>(b) if any company which has paid the said duty or composition in full, subsequently issues an addition to its subscribed capital—one and a half per centum of the additional capital so issued.</p>	
<p>59-A. SAPURDNAMA ...</p> <p>SCRIP, See CERTIFICATE (No. 19).</p>	<p>One anna.</p>
<p>60. SHIPPING ORDER for or relating to the Conveyance of goods on board of any vessel.</p>	<p>One anna.</p>
<p>61. SURRENDER OF LEASE—</p> <p>(a) when the duty with which the lease is chargeable does not exceed five rupees ;</p> <p>(b) in any other case</p>	<p>The duty with which such lease is chargeable.</p> <p>¹[Seven rupees eight annas.]</p>
<p><i>Exemption.</i></p> <p>Surrender of lease, executed by a lessee in favour of his Zamindar.</p>	
<p>62. TRANSFER (whether with or without consideration)—</p> <p>(a) of shares in an incorporated company or other body corporate ;</p> <p>(b) of debentures, being marketable securities, whether the debenture is liable to duty or not, except debentures provided for by section 8;</p>	<p>One half of the duty payable on a Conveyance (No. 23) for a consideration equal to the value of the share.</p> <p>One half of the duty payable on a Conveyance (No. 23) for a consideration equal to the face amount of the debenture.</p>

¹Substituted by Notification No. 11-L/86 published in Government Gazette dated 28th Maghar 1986.

Description of Instrument.	Proper Stamp-duty.
<p>(c) of any interest secured by a bond, mortgage-deed or policy of insurance—</p> <p>(i) if the duty on such bond, mortgage-deed or policy does not exceed five rupees ;</p> <p>(ii) in any other case</p> <p>(d) Omitted.</p> <p>(e) of any trust property without consideration from one trustee to another trustee or from a trustee to a beneficiary.</p>	<p>The duty with which such bond, mortgage-deed or policy of insurance is chargeable.</p> <p>¹[Seven rupees eight annas].</p> <p>¹[Seven rupees eight annas] or such smaller amount as may be chargeable under clauses (a) to (c) of this article.</p>
<p style="text-align: center;"><i>Exemptions.</i></p> <p>Transfer by endorsement—</p> <p>(a) of a bill of exchange, cheque or promissory note ;</p> <p>(b) of a warrant for goods, or other mercantile document of title to goods ;</p> <p>(c) of a policy of insurance ;</p> <p>(d) of securities of Government of India.</p> <p>See also Section 8.</p>	
<p>63. TRANSFER OF LEASE by way of assignment and not by way of under-lease.</p>	<p>The same duty as a Conveyance (No. 23) for a consideration equal to the amount of consideration for the transferer</p>
<p style="text-align: center;"><i>Exemption.</i></p> <p>Transfer of any lease exempt from duty.</p> <p>64. TRUST—</p> <p>A.—DECLARATION OF—of, or concerning, any property when made by any writing not being a Will.</p>	
	<p>¹[Twenty-two rupees eight annas].</p>

¹Substituted by Notification No. 11-L/86 published in the Government Gazette dated 28th Maghar 1986.

Description of Instrument.	Proper Stamp-duty
<p>B.—REVOCATION OF—of, or concerning, any property when made by any instrument other than a Will.</p> <p><i>See also</i> Settlement (No. 58).</p>	¹ [Fifteen rupees].
Valuation. <i>See</i> Appraisement (No. 8).	
<p>65. WARRANT FOR GOODS, that is to say, any instrument evidencing the title of any person therein named, or his assigns or the holder thereof, to the property in any goods lying in or upon any warehouse such instrument being signed or certified by or on behalf of the person in whose custody such goods may be.</p>	¹ [Six annas].

²ORDER No. 388-C OF 1938.

Revenue Minister's Memo. No. S-53, dated 25th October 1939, regarding reduction on stamp duty on partition deeds.

In exercise of the powers vested in the Council by clause (a) of section 9 of the Stamp Act (XL of 1977) it is hereby ordered that the duty chargeable on partition deeds relating to land (*vide* Article 45 of the Act) be reduced as under:—

- | | |
|--|--|
| (a) On instruments of partition relating to land held on Revenue Settlement for a period not exceeding 50 years. | To the amount of duty chargeable on a bond for the amount equivalent to five times the annual revenue of the land. |
| (b) On instruments of partition relating to waste or un-assessed land. | To one anna per acre. |

By order in Council,

(Sd.) N. GOPALASWAMI,

PRIME MINISTER.

NOTE.—Rule 16 of the Partition Rules of 1917 is abrogated with the promulgation of this order.

¹Substituted by Notification No. 11-L/86 published in the Government Gazette dated 28th Maghar 1986.

²Notification No. 4-L/95 published in the Government Gazette dated 24th Har, 1995.

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THE TRUST ACT, 1977.

Act No. XLI of 1977.

[Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No. 8372, dated 11th September, 1920 and State Council Resolution No. 1, dated 8th April 1925. (Notification No. 14-L/81).]

An Act to define and amend the law relating to Private Trusts and Trustees.

Preamble. WHEREAS it is expedient to define and amend the law relating to private trusts and trustees; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Savings. 1. This Act may be called the Trusts Act, 1977. Nothing herein contained affects the rules of Mohammedan law as to *waqf*, or the mutual relations of the members of an undivided family as

Short title, extent and commencement are given and regulated by Act IV of 1977.

determined by any customary or personal law, or applies to State Dharmarth Trust public or private religious or charitable endowments, or to trusts to distribute prizes taken in war among the captors; and nothing in the second chapter of this Act applies to trusts created before the date on which this Act comes into force.

2. Omitted.

3. A "trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner:

Interpretation clause
"trust".

the person who reposes or declares the confidence is called the "author of the trust": the person who accepts the confidence is called the "trustee": the person for whose benefit the confidence is accepted is called the "beneficiary": the subject-matter of the trust is called "trust-property" or "trust-money": the "beneficial interest" or "interest" of the beneficiary is his right against the trustee as owner of the trust-property; and the instrument, if any, by which the trust is declared is called the "instrument of trust":

"author of the trust":
"trustee":
"beneficiary":
"trust-property":
"beneficial interest":
"instrument of trust".

a breach of any duty imposed on a trustee, as such, by any law for the time being in force, is called a "breach of trust":

"breach of trust":

and in this Act, unless there be something repugnant in the subject or context, "registered" means

"registered":

registered under the law for the registration of documents for the time being in force: a person is said to have "notice" of a fact either when he actually knows that fact or when, but for wilful abstention from inquiry or gross

"notice".

negligence, he would have known it, or when information of the fact is given to or obtained by his agent, under the circumstances mentioned in the Contract Act, 1977, section 229; and all expressions used herein and defined in the Contract Act

Expressions defined in
the Contract Act.

shall be deemed to have the meanings respectively attributed to them by that Act.

CHAPTER II.

OF THE CREATION OF TRUSTS.

4. A trust may be created for any lawful purpose. The purpose of the trust is lawful unless it is (a) forbidden by law, or (b) is of such a nature that, if permitted, it would defeat the provisions of any

Lawful purpose.

law, or (c) is fraudulent, or (d) involves or implies injury to the person or property of another or (e) the Court regards it as immoral or opposed to public policy.

Every trust of which the purpose is unlawful, is void. And where a trust is created for two purposes, of which one is lawful, and the other unlawful, and the two purposes cannot be separated, the whole trust is void.

EXPLANATION.—In this section, the expression “law” includes, where the trust-property is immovable and situate in a foreign country, the law of such country.

Illustrations.

(a) A conveys property to B in trust to apply the profits to the nurture of female foundlings to be trained up as prostitutes. The trust is void.

(b) A bequeaths property to B in trust to employ it in carrying on a smuggling business, and out of the profits thereof to support A's children. The trust is void.

(c) A, while in insolvent circumstances, transfers property to B in trust for A during his life, and after his death for B. A is declared an insolvent. The trust for A is invalid as against his creditors.

5. No trust in relation to immovable property is valid unless declared by a non-testamentary instrument in writing signed by the author of the trust or the trustee and registered, or by the will of the author of the trust or of the trustee.

No trust in relation to movable property is valid unless declared as aforesaid, or unless the ownership of the property is transferred to the trustee.

These rules do not apply where they would operate so as to effectuate a fraud.

6. Subject to the provisions of section 5, a trust is created when the author of the trust indicates with reasonable certainty by any words or acts (a) an intention on his part to create thereby a trust, (b) the purpose of the trust, (c) the beneficiary, and (d) the trust-property, and (unless the trust is declared by will or the author of the trust is himself to be the trustee) transfers the trust-property to the trustee.

Illustrations.

(a) A bequeaths certain property to B, “having the fullest confidence that he will dispose of it for the benefit of C.” This creates a trust so far as regards A and C.

(b) A bequeaths certain property to B, “hoping he will continue it in the family.” This does not create a trust, as the beneficiary is not indicated with reasonable certainty.

(c) A bequeaths certain property to B, requesting him to distribute it amongst such members of C's family as B should think most deserving. This does not create a trust, for the beneficiaries are not indicated with reasonable certainty.

(d) A bequeaths certain property to B, desiring him to divide the bulk of it among C's children. This does not create a trust, for the trust property is not indicated with sufficient certainty.

(e) A bequeaths a shop and stock-in-trade to B, on condition that he pays A's debts and a legacy to C. This is a condition, not a trust for A's creditors and C.

Who may create trusts. **7.** A trust may be created—

(a) by every person competent to contract, and,

(b) with the permission of a principal Civil Court of original jurisdiction, by or on behalf of a minor,

but subject in each case to the law for the time being in force as to the circumstances and extent in and to which the author of the trust may dispose of the trust-property.

8. The subject-matter of a trust must be property transferable to the beneficiary.

Subject of trust.

It must not be a merely beneficial interest under a subsisting trust.

Who may be beneficiary.

9. Every person capable of holding property may be a beneficiary.

A proposed beneficiary may renounce his interest under the trust by disclaimer addressed to the trustee, or by setting up, with notice of the trust, a claim inconsistent therewith.

Disclaimer by beneficiary.

10. Every person capable of holding property may be a trustee; but, where the trust involves the exercise of discretion, he cannot execute it unless he is competent to contract.

Who may be trustee.

No one is bound to accept a trust.

A trust is accepted by any words or acts of the trustee indicating with reasonable certainty such acceptance.

Acceptance of trust.

Instead of accepting a trust, the intended trustee may, within a reasonable period, disclaim it, and such disclaimer shall prevent the trust-

Disclaimer of trust

property from vesting in him.

A disclaimer by one of two or more co-trustees vests the trust-property in the other or others, and makes him or them sole trustee or trustees from the date of the creation of the trust.

Illustrations.

(a) A bequeaths certain property to B and C, his executors, as trustees for D. B and C prove A's will. This is in itself an acceptance of the trust, and

B and C hold the property in trust for D.

(b) A transfers property to B in trust to sell it and to pay out of the proceeds A's debts. B accepts the trust and sells the property. So far as regards B, a trust of the proceeds is created for A's creditors.

(c) A bequeaths a lakh of rupees to B upon certain trusts and appoints him his executor. B severs the lakh from the general assets and appropriates it to the specific purpose. This is an acceptance of the trust.

CHAPTER III.

OF THE DUTIES AND LIABILITIES OF TRUSTEES.

11. The trustee is bound to fulfil the purpose of the trust, ^{Trustee to execute} and to obey the directions of the author of ^{trust} the trust given at the time of its creation, except as modified by the consent of all the beneficiaries being competent to contract.

Where the beneficiary is incompetent to contract, his consent may, for the purposes of this section, be given by a principal Civil Court of original jurisdiction.

Nothing in this section shall be deemed to require a trustee to obey any direction when to do so would be impracticable, illegal or manifestly injurious to the beneficiaries.

EXPLANATION.—Unless a contrary intention be expressed, the purpose of a trust for the payment of debts shall be deemed to be (a) to pay only the debts of the author of the trust existing and recoverable at the date of the instrument of trust, or, when such instrument is a will, at the date of his death, and (b) in the case of debts not bearing interest, to make such payment without interest.

Illustrations.

(a) A, a trustee, is simply authorised to sell certain land by public auction. He cannot sell the land by private contract.

(b) A, a trustee of certain land for X, Y and Z, is authorised to sell the land to B for a specified sum. X, Y and Z, being competent to contract, consent that A may sell the land to C for a less sum. A may sell the land accordingly.

(c) A, a trustee for B and her children, is directed by the author of the trust to lend, on B's request, trust property to B's husband, C, on the security of, his bond. C becomes insolvent and B requests A to make the loan. A may refuse to make it.

12. A trustee is bound to acquaint himself, as soon as possible, with the nature and circumstances ^{Trustee to inform} of the trust-property; to obtain, where ^{himself of state} necessary, a transfer of the trust-property ^{trust property.} to himself; and (subject to the provisions of the instrument of trust) to get in trust-moneys invested on insufficient or hazardous security.

Illustrations.

(a) The trust-property is a debt outstanding on personal security. The instrument of trust gives the trustee no discretionary power to leave the debt so outstanding. The trustee's duty is to recover the debt without unnecessary delay.

(b) The trust property is money in the hands of one of two co-trustees. No discretionary power is given by the instrument of trust. The other co-trustee must not allow the former to retain the money for a longer period than the circumstances of the case required.

13. A trustee is bound to maintain and defend all such suits, and (subject to the provisions of the instrument of trust) to take such other steps as, regard being had to the nature and amount or value of the trust-property, may be reasonably requisite for the preservation of the trust-property and the assertion or protection of the title thereto.

Trustee to protect title to trust-property.

Illustration.

The trust-property is immovable property which has been given to the author of the trust by an unregistered instrument. Subject to the provisions of the Registration Act the trustee's duty is to cause the instrument to be registered.

14. The trustee must not for himself or another set up or aid any title to the trust-property adverse to the interest of the beneficiary.

Trustee not to set up title adverse to beneficiary.

15. A trustee is bound to deal with the trust-property as carefully as a man of ordinary prudence would deal with such property if it were his own; and, in the absence of a contract to the contrary, a trustee so dealing is not responsible for the loss, destruction or deterioration of the trust-property.

Care required from trustee

Illustrations.

(a) A, living in Calcutta, is a trustee for B, living in Bombay. A remits trust-funds to B by bills drawn by a person of undoubted credit in favour of the trustee as such, and payable at Bombay. The bills are dishonoured. A is not bound to make good the loss.

(b) A, a trustee of leasehold property, directs the tenant to pay the rents on account of the trust to a banker, B, then in credit. The rents are accordingly paid to B, and A leaves the money with B only till wanted. Before the money is drawn out, B becomes insolvent. A, having had no reason to believe that B was in insolvent circumstances is not bound to make good the loss.

(c) A, a trustee of two debts for B, releases one and compounds the other in good faith, and reasonably believing that it is for B's interest to do so. A is not bound to make good any loss caused thereby to B.

(d) A, a trustee directed to sell the trust-property by auction, sells the same, but does not advertise the sale and otherwise fails in reasonable diligence in inviting competition. A is bound to make good the loss caused thereby to the beneficiary.

(e) A, a trustee for B, in execution of his trust, sells the trust-property, but from want of due diligence on his part fails to receive part of the purchase-money. A is bound to make good the loss thereby caused to B.

(f) A, a trustee for B of a policy of insurance, has funds in hand for payment of the premiums. A neglects to pay the premiums, and the policy is consequently forfeited. A is bound to make good the loss to B.

(g) A bequeaths certain moneys to B and C as trustees and authorises to continue trust-moneys upon the personal security of a certain firm in which A had himself invested them. A dies, and a change takes place in the firm. B and C must not permit the moneys to remain upon the personal security of the new firm.

(h) A, a trustee for B, allows the trust to be executed solely by his co-trustee, C. C misapplies the trust-property. A is personally answerable for the loss resulting to B.

16. Where the trust is created for the benefit of several persons in succession, and the trust-property is of a wasting nature or a future or reversionary interest, the trustee is bound, unless an intention to the contrary may be inferred from the instrument of trust, to convert the property into property of a permanent and immediately profitable character.

Conversion of perishable property.

Illustrations.

(a) A bequeaths to B all his property in trust for C during his life, and on his death for D and on D's death for E. A's property consists of three leasehold houses, and there is nothing in A's will to show that he intended the houses, to be enjoyed *in specie*. B should sell the houses, and invest the proceeds in accordance with section 20.

(b) A bequeaths to B his three leasehold houses in Calcutta and all the furniture therein in trust for C during his life, and on his death for D, and on D's death for E. Here an intention that the houses and furniture should be enjoyed *in specie* appears clearly, and B should not sell them.

17. Where there are more beneficiaries than one, the trustee is bound to be impartial, and must not execute the trust for the advantage of one at the expense of another.

Trustee to be impartial.

Where the trustee has a discretionary power, nothing in this section shall be deemed to authorise the Court to control the exercise reasonably and in good faith of such discretion.

Illustration.

A, a trustee for B, C and D, is empowered to choose between several specified modes of investing the trust-property. A in good faith chooses one of these modes. The Court will not interfere, although the result of the choice may be to vary the relative rights of B, C and D.

18. Where the trust is created for the benefit of several persons in succession and one of them is in possession of the trust-property, if he commits, or threatens to commit, any act

Trustee to prevent waste.

which is destructive or permanently injurious thereto, the trustee is bound to take measures to prevent such act.

19. A trustee is bound (a) to keep clear and accurate accounts of the trust-property, and (b), at all reasonable times, at the request of the beneficiary, to furnish him with full and accurate information as to the amount and state of the trust-property.

Accounts and information.

20. Where the trust-property consists of money and cannot be applied immediately or at an early date to the purposes of the trust, the trustee is bound (subject to any direction contained in the instrument of trust) to invest the money on the following securities, and on no others:—

Investment of trust-money.

(a) in promissory notes, debentures, stock or other securities of the Government of India, or of the State or of the United Kingdom of Great Britain and Ireland;

(b) in bonds debentures and annuities charged by the Imperial Parliament on the revenues of India;

Provided that no money shall be invested in any such annuity being a terminable annuity unless a sinking fund has been established in connection with such annuity;

(bb) in India three and a half per cent. stock, India three per cent. stock, India two and a half per cent. stock or any other capital stock which may at any time hereafter be issued by the Secretary of State for India in Council under the authorities of an Act of Parliament and charged on the revenues of India.

(c) in stock or debentures of, or shares in, Railway or other Companies the interest whereon shall have been guaranteed by the Secretary of State for India in Council, or by the Government of India or in debentures of the Bombay central co-operative Bank limited the interest wherein shall have been guaranteed by the Secretary of State for India in Council;

(d) Omitted.

(e) on a first mortgage of immovable property situate in the State: Provided that the property is not a leasehold for a term of years and that the value of the property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the mortgage-money; or

(f) on any other security expressly authorised by the instrument of trust, or by any rule which the High Court may from time to time prescribe in this behalf:

Provided that, where there is a person competent to contract and entitled in possession to receive the income of the trust-property for his life, or for any greater estate, no investment on any security mentioned or referred to in clauses (e) and (f) shall be made without his consent in writing.

20-A. (1) A trustee may invest in any of the securities mentioned or referred to in section 20, notwithstanding that the same may be redeemable and that the price exceeds the redemption value :

Power to purchase redeemable stock at a premium.

Provided that a trustee may not purchase at a price exceeding its redemption value any security mentioned or referred to in clause (c) of section 20 which is liable to be redeemed within fifteen years of the date of purchase at par or at some other, fixed rate, or purchase any such security as is mentioned or referred to in the said clause which is liable to be redeemed at par or at some other fixed rate at a price exceeding fifteen per centum above par or such other fixed rate.

(2) A trustee may retain until redemption any redeemable stock, fund or security which may have been purchased in accordance with this section.

21. Nothing in section 20 shall apply to investments made before this Act comes into force, or, in case the trust-money does not exceed three thousand rupees, a deposit thereof in a Government Savings Bank.

Investments made before commencement of this Act.
Deposit in Government Savings Bank.

22. Where a trustee directed to sell within a specified time extends such time, the burden of proving, as between himself and the beneficiary, that the latter is not prejudiced by the extension lies upon the trustee, unless the extension has been authorised by a principal Civil Court of original jurisdiction.

Sale by trustee directed to sell within specified time.

Illustration.

A bequeaths property to B, directing him with all convenient speed and within five years to sell it, and apply the proceeds for the benefit of C. In the exercise of reasonable discretion, B postpones the sale for six years. The sale is not thereby rendered invalid, but C, alleging that he has been injured by the postponement, institutes a suit against B to obtain compensation. In such suit the burden of proving that C has not been injured lies on B.

23. Where the trustee commits a breach of trust he is liable to make good the loss which the trust-property or the beneficiary has thereby sustained, unless the beneficiary has by fraud induced the trustee to commit the breach, or the beneficiary, being competent to contract, has himself, without coercion or undue influence having been brought to bear on him, concurred in the breach, or subsequently acquiesced therein, with full knowledge of the facts of the case and of his rights as against the trustee.

Liability for breach of trust.

A trustee committing a breach of trust is not liable to pay interest except in the following cases:—

(a) where he has actually received interest:

(b) where the breach consists in unreasonable delay in paying trust-money to the beneficiary:

(c) where the trustee ought to have received interest, but has not done so:

(d) where he may be fairly presumed to have received interest.

He is liable, in case (a), to account for the interest actually received, and, in cases (b), (c) and (d), to account for simple interest at the rate of six per cent. per annum, unless the Court otherwise directs.

(e) Where the breach consists in failure to invest trust-money and to accumulate the interest or dividends thereon, he is liable to account for compound interest (with half-yearly rests) at the same rate.

(f) Where the breach consists in the employment of trust-property or the proceeds thereof in trade or business, he is liable to account, at the option of the beneficiary, either for compound interest (with half-yearly rests) at the same rate, or for the net profits made by such employment.

Illustrations.

(a) A trustee improperly leaves trust-property outstanding, and it is consequently lost: he is liable to make good the property lost, but he is not liable to pay interest thereon.

(b) A bequeaths a house to B in trust to sell it and pay the proceeds to C. B neglects to sell the house for a great length of time whereby the house is deteriorated and its market-price falls. B is answerable to C for the loss.

(c) A trustee is guilty of unreasonable delay in investing trust money in accordance with section 20, or in paying it to the beneficiary. The trustee is liable to pay interest thereon for the period of the delay.

(d) The duty of the trustee is to invest trust-money in any of the securities mentioned in section 20, clause (a), (b), (c) or (d). Instead of so doing, he retains the money in his hands. He is liable at the option of the beneficiary, to be charged either with the amount of the principal money and interest, or with the amount of such securities as he might have purchased with the trust-money when the investment should have been made, and the intermediate dividends, and interest thereon.

(e) The instrument of trust directs the trustee to invest trust-money either in any of such securities or on mortgage of immovable property. The trustee does neither. He is liable for the principal money and interest.

(f) The instrument of trust directs the trustee to invest trust-money in any of such securities and to accumulate the dividends thereon. The trustee disregards the direction. He is liable, at the option of the beneficiary to be charged either with the amount of the principal money and compound interest, or with the amount of such securities as he might have purchased with the trust-money when the investment shall have been made, together with the amount of the accumulation which would have arisen from a proper investment of the intermediate dividends.

(g) Trust-property is invested in one of the securities mentioned in section 20, clause (a), (b), (c) or (d). The trustee sells such security for some purpose not authorised by the terms of the instrument of trust. He is liable, at the option of the beneficiary, either to replace the security with the intermediate dividends and interest thereon, or to account for the proceeds of the sale with interest thereon.

(h) The trust-property consists of land. The trustee sells the land to a purchaser for a consideration without notice of the trust. The trustee is liable, at the option of the beneficiary, to purchase other land of equal value to be settled upon the like trust, or to be charged with the proceeds of the sale with interest.

24. A trustee who is liable for a loss occasioned by a breach of trust in respect of one portion of the trust-property cannot set-off against his liability a gain which has accrued to another portion of the trust-property through another and distinct breach of trust.

No set off allowed to trustee.

25. Where a trustee succeeds another, he is not, as such, liable for the acts or defaults of his predecessor.

Non-liability for predecessor's default.

26. Subject to the provisions of sections 13 and 15, one trustee is not, as such, liable for a breach of trust committed by his co-trustee:

Non-liability for co-trustee's default.

Provided that, in the absence of an express declaration to the contrary in the instrument of trust, a trustee is so liable—

(a) where he has delivered trust-property to his co-trustee without seeing to its proper application:

(b) where he allows his co-trustee to receive trust-property and fails to make due enquiry as to the co-trustee's dealings therewith, or allows him to retain it longer than the circumstances of the case reasonably require:

(c) where he becomes aware of a breach of trust committed or intended by his co-trustee, and either actively conceals it or does not within a reasonable time take proper steps to protect the beneficiary's interest.

A co-trustee who joins in signing a receipt for trust-property and proves that he has not received the same is not answerable, by reason of such signature only, for loss or misapplication of the property by his co-trustee.

Joining in receipt for conformity.

Illustration.

A bequeaths certain property to B and C, and directs them to sell it and invest the proceeds for the benefit of D. B and C accordingly sell the property, and the purchase-money is received by B and retained in his hands. C pays no attention to the matter for two years and then calls on B to make the investment. B is unable to do so, becomes insolvent and the purchase-money is lost. C may be compelled to make good the amount.

27. Where co-trustees jointly commit a breach of trust, or where one of them by his neglect enables the other to commit a breach of trust, each is liable to the beneficiary for the whole of the loss occasioned by such breach.

But as between the trustees themselves, if one be less guilty than another and has had to refund the loss, the former may compel the latter, or his legal representative to the extent of the assets he has received, to make good such loss; and if all be equally guilty, any one or more of the trustees who has had to refund the loss may compel the others to contribute.

Nothing in this section shall be deemed to authorise a trustee who has been guilty of fraud to institute a suit to compel contribution.

28. When any beneficiary's interest becomes vested in another person, and the trustee, not having notice of the vesting, pays or delivers trust-property to the person who would have been entitled thereto in the absence of such vesting, the trustee is not liable for the property so paid or delivered.

29. When the beneficiary's interest is forfeited or awarded by legal adjudication to Government, the trustee is bound to hold the trust-property to the extent of such interest for the benefit of such person in such manner as the Government may direct in this behalf.

30. Subject to the provisions of the instrument of trust and of sections 23 and 26, trustees shall be respectively chargeable only for such moneys, stocks, funds and securities as they respectively actually receive, and shall not be answerable the one for the other of them, nor for any banker, broker or other person in whose hands any trust-property may be placed, nor for the insufficiency or deficiency of any stocks, funds or securities, nor otherwise for involuntary losses.

CHAPTER IV.

OF THE RIGHTS AND POWERS OF TRUSTEES.

31. A trustee is entitled to have in his possession the instrument of trust and all the documents of title (if any) relating solely to the trust-property.

32. Every trustee may reimburse himself, or pay or discharge out of the trust-property, all expenses properly incurred in or about the execution of the trust-property, or the protection or support of the beneficiary.

Right to reimburse
ment of expenses.

If he pays such expenses out of his own pocket, he has a first charge upon the trust-property for such expenses and interest thereon; but such charge (unless the expenses have been incurred with the sanction of a principal Civil Court of original jurisdiction) shall be enforced only by prohibiting any disposition of the trust-property without previous payment of such expenses and interest.

If the trust-property fail, the trustee is entitled to recover from the beneficiary personally on whose behalf he acted, and at whose request, expressed or implied, he made the payment, the amount of such expenses.

Where a trustee has by mistake made an over-payment to the beneficiary, he may reimburse the trust-property out of the beneficiary's interest if such interest fail, the trustee is entitled to recover from the beneficiary personally the amount of such over-payment.

Right to be recouped
for erroneous over-pay-
ment.

33. A person other than a trustee who has gained an advantage from a breach of trust must indemnify the trustee to the extent of the amount actually received by such person under the breach; and where he is a beneficiary the trustee has a charge on his interest for such amount.

Right to indemnity
from gainer by breach
of trust.

Nothing in this section shall be deemed to entitle a trustee to be indemnified who has, in committing the breach of trust, been guilty of fraud.

34. Any trustee may, without instituting a suit, apply by petition to a principal Civil Court of original jurisdiction for its opinion, advice or direction on any present questions respecting the management or administration of the trust-property other than questions of detail, difficulty or importance, not proper in the opinion of the Court for summary disposal.

Right to apply to
Court for opinion in
management of trust-
property.

A copy of such petition shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit.

The trustee stating in good faith the facts in such petition and acting upon the opinion, advice or direction given by the Court shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee in the subject-matter of the application.

The costs of every application under this section shall be in the discretion of the Court to which it is made.

35. When the duties of a trustee, as such, are completed, he is entitled to have the accounts of his administration of the trust-property examined and settled; and, where nothing is due to the beneficiary under the trust, to an acknowledgment in writing to that effect.

36. In addition to the powers expressly conferred by this Act and by the instrument of trust, and subject to the restrictions, if any, contained in such instrument, and to the provisions of section 17, a trustee may do all acts which are reasonable and proper for the realisation, protection or benefit of the trust-property, and for the protection or support of a beneficiary who is not competent to contract.

Except with the permission of a principal Civil Court of original jurisdiction, no trustee shall lease trust-property for a term exceeding twenty-one years from the date of executing the lease, nor without reserving the best yearly rent that can be reasonably obtained.

37. Where the trustee is empowered to sell any trust-property, he may sell the same subject to prior charges or not, and either together or in lots, by public auction or private contract, and either at one time or at several times, unless the instrument of trust otherwise directs.

38. The trustee making any such sale may insert such reasonable stipulations either as to title or evidence of title, or otherwise, in any conditions of sale or contract for sale, as he thinks fit; and may also buy-in the property or any part thereof at any sale by auction, and rescind or vary any contract for sale, and re-sell the property so bought-in, or as to which the contract is so rescinded, without being responsible to the beneficiary for any loss occasioned thereby.

Where a trustee is directed to sell trust-property or to invest trust-money in the purchase of property, he may exercise a reasonable discretion as to the time of effecting the sale or purchase.

(a) A bequeaths property to B, directing him to sell it with all convenient

speed and pay the proceeds to C. This does not render all immediate sale imperative.

(b) A bequeaths property to B, directing him to sell it at such time and in such manner as he shall think fit and invest the proceeds for the benefit of C. This does not authorise B, as between him and C, to postpone the sale to an indefinite period.

39. For the purpose of completing any such sale, the trustee shall have power to convey or otherwise dispose of the property sold in such manner as may be necessary.

Power to convey.

40. A trustee may, at his discretion, call in any trust-property invested in any security and invest the same on any of the securities mentioned or referred to in section 20, and from time to time vary any such investments for others of the same nature:

Power to vary investment.

Provided that, where there is a person competent to contract and entitled at the time to receive the income of the trust-property for his life, or for any greater estate, no such change of investment shall be made without his consent in writing.

41. Where any property is held by a trustee in trust for a minor, such trustee may, at his discretion, pay to the guardians (if any) of such minor, or otherwise apply for or towards his maintenance or education or advancement, in life, or the reasonable expenses of his religious worship, marriage or funeral, the whole or any part of the income to which he may be entitled in respect of such property; and such trustee shall accumulate all the residue of such income by way of compound interest, by investing the same and the resulting income thereof from time to time in any of the securities mentioned or referred to in section 20, for the benefit of the person who shall ultimately become entitled to the property from which such accumulations have arisen: Provided that such trustee may, at any time, if he thinks fit, apply the whole or any part of such accumulations as if the same were part of the income arising in the then current year.

Power to apply property of minors, etc., for their maintenance, etc.

Where the income of the trust-property is insufficient for the minor's maintenance or education or advancement in life, or the reasonable expenses of his religious worship, marriage or funeral, the trustee may, with the permission of a principal Civil Court of original jurisdiction, but not otherwise, apply the whole or any part of such property for or towards such maintenance, education, advancement or expenses.

Nothing in this section shall be deemed to affect the provisions of any local law for the time being in force relating to the persons and property of minors.

42. Any trustees or trustee may give a receipt in writing for any money, securities or other moveable property payable, transferable or deliverable to them or him by reason, or in the exercise, of any trust or power; and in the absence of fraud, such receipt shall discharge the person paying transferring or delivering the same therefrom, and from seeing to the application thereof, or being accountable for any loss or misapplication thereof.

Power to give receipts.

43. Two or more trustees acting together may, if and as they think fit—

Power to compound etc.

(a) accept any composition or any security for any debt or for any property claimed;

(b) allow any time for payment of any debt;

(c) compromise, compound, abandon, submit to arbitration or otherwise settle any debt, account, claim or thing whatever relating to the trust; and,

(d) for any of those purposes, enter into, give, execute and do such agreements, instruments of composition or arrangement, releases and other things as to them seem expedient, without being responsible for any loss occasioned by any act or thing so done by them in good faith.

The powers conferred by this section on two or more trustees acting together may be exercised by a sole acting trustee when by the instrument of trust, if any, a sole trustee is authorised to execute the trusts and powers thereof.

This section applies only if and as far as a contrary intention is not expressed in the instrument of trust, if any, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

This section applies only to trusts created after this Act comes into force.

44. When an authority to deal with the trust-property is given to several trustees and one of them disclaims or dies, the authority may be exercised by the continuing trustees, unless from the terms of the instrument of trust it is apparent that the authority is to be exercised by a number in excess of the number of the remaining trustees.

Power to several trustees of whom one disclaims or dies.

45. Where a decree has been made in a suit for the execution of a trust, the trustee must not exercise any of his powers except in conformity with such decree, or with the sanction of the Court by which the decree has been made, or, where an appeal against the decree is pending, of the Appellate Court.

[Suspension of trustee's powers by decree.]

CHAPTER V.

OF THE DISABILITIES OF TRUSTEES.

46. A trustee who has accepted the trust cannot afterwards renounce it except (a) with the permission of a principal Civil Court of original jurisdiction, or (b), if the beneficiary is competent to contract, with his consent, or (c) by virtue of a special power in the instrument of trust.

Trustee cannot renounce after acceptance.

47. A trustee cannot delegate his office or any of his duties either to a co-trustee or to a stranger, unless (a) the instrument of trust so provides, or (b) the delegation is in the regular course of business, or (c) the delegation is necessary, or (d) the beneficiary, being competent to contract, consents to the delegation.

Trustee cannot delegate.

EXPLANATION.—The appointment of an attorney or proxy to do an act merely ministerial and involving no independent discretion is not a delegation within the meaning of this section.

Illustrations.

(a) A bequeaths certain property to B and C on certain trusts to be executed by them or the survivor of them or the assigns of such survivor. B dies. C may bequeath the trust-property to D and E upon the trusts of A's will.

(b) A is a trustee of certain property with power to sell the same. A may employ an auctioneer to effect the sale.

(c) A bequeaths to B fifty houses let at monthly rents in trust to collect these rents and pay them to C. B may employ a proper person to collect these rents.

48. When there are more trustees than one, all must join in the execution of the trust, except where the instrument of trust otherwise provides.

Co-trustees cannot act singly.

49. Where a discretionary power conferred on a trustee is not exercised reasonably and in good faith, such power may be controlled by a principal Civil Court of original jurisdiction.

Control of discretionary power.

50. In the absence of express directions to the contrary contained in the instrument of trust or of a contract to the contrary entered into with the beneficiary or the Court at the time of accepting the trust, a trustee has no right to remuneration for his trouble, skill and loss of time in executing the trust.

Trustee may not charge for services.

51. A trustee may not use or deal with the trust-property for his own profit or for any other purpose unconnected with the trust.

Trustee may not use trust-property for his own profit.

52. No trustee whose duty it is to sell trust-property, and no agent employed by such trustee for the purpose of the sale, may, directly or indirectly, buy the same or any interest therein, on his own account or as agent for a third person.

Trustee for sale or his agent may not buy.

53. No trustee, and no person who has recently ceased to be a trustee, may, without the permission of a principal Civil Court of original jurisdiction, buy or become mortgagee or lessee of the trust-property, or any part thereof; and such permission shall not be given unless the proposed purchase, mortgage or lease is manifestly for the advantage of the beneficiary.

Trustee may not buy beneficiary's interest without permission.

And no trustee whose duty it is to buy or to obtain a mortgage or lease of particular property for the beneficiary may buy it, or any part thereof, or obtain a mortgage or release of it, or any part thereof, for himself.

Trustee for purchase.

54. A trustee or co-trustee whose duty it is to invest trust-money on mortgage or personal security must not invest it on a mortgage by, or on the personal security of, himself or one of his co-trustees.

Co-trustees may not lend to one of themselves.

CHAPTER VI.

OF THE RIGHTS AND LIABILITIES OF THE BENEFICIARY.

55. The beneficiary has, subject to the provisions of the instrument of trust, a right to the rents and profits of the trust-property.

Rights to rents and profits.

56. The beneficiary is entitled to have the intention of the author of the trust specifically executed to the extent of the beneficiary's interest;

Right to specific execution.

and, where there is only one beneficiary and he is competent to contract, or where there are several beneficiaries and they are competent to contract and all of one mind, he or they

Right to transfer of possession.

may require the trustee to transfer the trust-property to him or them, or to such person as he or they may direct.

When property has been transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in the second clause of this section applies to such property during her marriage.

Illustrations.

(a) Certain Government securities are given to trustees upon trust to accumulate the interest until A attains the age of 24, and then to transfer the gross amount to him. A on attaining majority may, as the person exclusively interested in the trust property, require the trustees to transfer it immediately to him.

(b) A bequeaths Rs. 10,000 to trustees upon trust to purchase an annuity for B, who has attained his majority and is otherwise competent. B may claim the Rs. 10,000.

(c) A transfers certain property to B and directs him to sell or invest it for the benefit of C, who is competent to contract. C may elect to take the property in its original character.

57. The beneficiary has a right, as against the trustee and all persons claiming under him with notice of the trust, to inspect and take copies of the instrument of trust, the documents of title relating solely to the trust-property, the accounts of the trust-property and the vouchers (if any) by which they are supported, and the cases submitted and opinions taken by the trustee for his guidance in the discharge of his duty.

58. The beneficiary, if competent to contract, may transfer his interest, but subject to the law for the time being in force as to the circumstances and extent in and to which he may dispose of such interest:

Provided that when property is transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in this section shall authorise her to transfer such interest during her marriage.

59. Where no trustees are appointed or all the trustees die, disclaim or are discharged, or where for any other reason the execution of a trust by the trustee is or becomes impracticable, the beneficiary may institute a suit for the execution of the trust, and the trust shall, so far as may be possible, be executed by the Court until the appointment of a trustee or new trustee.

60. The beneficiary has a right (subject to the provisions of the instrument of trust) that the trust-property shall be properly protected and

held and administered by proper persons and by a proper number of such persons.

EXPLANATION I—The following are not proper persons within the meaning of this section:—

A person domiciled abroad: an alien enemy: a person having an interest inconsistent with that of the beneficiary: a person in insolvent circumstances: and, unless the personal law of the beneficiary allows otherwise, a married woman and a minor.

EXPLANATION II.—When the administration of the trust involves the receipt and custody of money, the number of trustees should be two at least.

Illustrations.

(a) A, one of several beneficiaries, proves that B, the trustee, has improperly disposed of part of the trust-property, or that the property is in danger from B's being in insolvent circumstances, or that he is incapacitated from acting as trustee. A may obtain a receiver of the trust-property.

(b) A bequeaths certain jewels to B in trust for C. B dies during A's lifetime; then A dies. C is entitled to have the property conveyed to a trustee for him.

(c) A conveys certain property to four trustees in trust for B. Three of the trustees die. B may institute a suit to have three new trustees appointed in the place of the deceased trustees.

(d) A conveys certain property to three trustees in trust for B. All the trustees disclaim. B may institute a suit to have three trustees appointed in place of the trustees so disclaiming.

(e) A, a trustee for B, refuses to act, or goes to reside permanently out of British India, or is declared an insolvent, or compounds with creditors, or suffers a co-trustee to commit a breach of trust. B may institute a suit to have A removed and a new trustee appointed in his room.

61. The beneficiary has a right that his trustee shall be compelled to perform any particular act of his duty as such, and restrained from committing any contemplated or probable breach of trust.

Right to compel to any act of duty.

Illustrations.

(a) A contracts with B to pay him monthly Rs. 100 for the benefit of C. B writes and signs a letter declaring that he will hold in trust for C the money so to be paid. A fails to pay the money in accordance with his contract. C may compel B on a proper indemnity to allow C to sue on the contract in B's name.

(b) A is trustee of certain land, with a power to sell the same and pay the proceeds to B and C equally. A is about to make an improvident sale of the land. B may sue on behalf of himself and C for an injunction to restrain A from making the sale.

62. Where a trustee has wrongfully bought trust-property, the beneficiary has a right to have the property declared subject to the trust or re-transferred by the trustee, if it

Wrongful purchase by trustee.

remains in his hands unsold, or, if it has been bought from him by any person with notice of the trust, by such person. But in such case the beneficiary must repay the purchase-money paid by the trustee, with interest, and such other expenses (if any) as he has properly incurred in the preservation of the property; and the trustee or purchaser must (a) account for the net profits of the property, (b) be charged with an occupation-rent, if he has been in actual possession of the property, and (c) allow the beneficiary to deduct a proportionate part of the purchase-money if the property has been deteriorated by the acts or omissions of the trustee or purchaser.

Nothing in this section—

(a) impairs the rights of lessees and others who, before the institution of a suit to have the property declared subject to the trust or re-transferred, have contracted in good faith with the trustee or purchaser, or

(b) entitles the beneficiary to have the property declared subject to the trust or re-transferred where he, being competent to contract, has himself, without coercion or undue influence having been brought to bear on him ratified the sale to the trustee with full knowledge of the facts of the case and of his rights as against the trustee.

63. Where trust-property comes into the hands of a third person inconsistently with the trust, the beneficiary may require him to admit formally, or may institute a suit for a declaration, that the property is comprised in the trust.

Where the trustee has disposed of trust-property and the money or other property which he has received therefor can be traced in his hands, or the hands of his legal representative or legatee, the beneficiary has, in respect thereof, rights as nearly as may be the same as his rights in respect of the original trust-property.

Illustrations.

(a) A, a trustee for B of Rs. 10,000, wrongfully invests the Rs. 10,000 in the purchase of certain land. B is entitled to the land.

(b) A, a trustee, wrongfully purchases land in his own name partly with his own money, partly with money subject to a trust for B. B is entitled to a charge on the land for the amount of the trust-money so misemployed.

64. Nothing in section 63 entitles the beneficiary to any right in respect of property in the hands of—

(a) a transferee in good faith for consideration without having notice of the trust, either when the purchase-money was paid, or when the conveyance was executed, or

(b) a transferee for consideration from such a transferee.

A judgment-creditor of the trustee attaching and purchasing trust-property is not a transferee for consideration within the meaning of this section.

Nothing in section 63 applies to money, currency notes and negotiable instruments in the hands of a *bona fide* holder to whom they have passed in circulation, or shall be deemed to affect the Contract Act section 108, or the liability of a person to whom a debt or charge is transferred.

65. Where a trustee wrongfully sells or otherwise transfers trust-property and afterwards himself becomes the owner of the property, the property again becomes subject to the trust, notwithstanding any want of notice on the part of intervening transferees in good faith for consideration.

Acquisition by trustee of trust-property wrongfully converted.

66. Where the trustee wrongfully mingles the trust-property with his own, the beneficiary is entitled to a charge on the whole fund for the amount due to him.

Right in case of blended property.

67. If a partner, being a trustee, wrongfully employs trust-property in the business or on the account of the partnership, no other partner is liable therefor in his personal capacity to the beneficiaries, unless he had notice of the breach of trust.

Wrongful employment by partner-trustee of trust-property for partnership purposes.

The partners having such notice are jointly and severally liable for the breach of trust.

Illustrations.

(a) A and B are partners. A dies, having bequeathed all his property to B in trust for Z, and appointed B his sole executor. B, instead of winding-up the affairs of the partnership, retains all the assets in the business. Z may compel him, as partner, to account for so much of the profits as are derived from A's share of the capital. B is also answerable to Z for the improper employment of A's assets.

(b) A, a trader, bequeaths his property to B in trust for C, appoints B his sole executor, and dies. B enters into partnership with X and Y in the same trade, and employs A's assets in the partnership-business. B gives an indemnity to X and Y against the claims of C. Here X and Y are jointly liable with B to C as having knowingly become parties to the breach of trust committed by B.

Liability of beneficiary joining in breach of trust.

68. Where one of several beneficiaries—

(a) joins in committing breach of trust, or

(b) knowing obtains any advantage therefrom without the consent of the other beneficiaries, or

(c) becomes aware of a breach of trust committed or intended to be committed, and either actually conceals it, or does not within a reasonable time take proper steps to protect the interests of the other beneficiaries, or

(d) has deceived the trustee and thereby induced him to commit a breach of trust,

the other beneficiaries are entitled to have all his beneficial interest impounded as against him and all who claim under him (otherwise than as transferees for consideration without notice of the breach) until the loss caused by the breach has been compensated.

When property has been transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in this section applies to such property during her marriage.

69. Every person to whom a beneficiary transfers his interest has the rights, and is subject to the liabilities of the beneficiary in respect of such interest at the date of the transfer.

Rights and liabilities
of beneficiary's trans-
feree.

CHAPTER VII.

OF VACATING THE OFFICE OF TRUSTEE.

70. The office of a trustee is vacated by his death or by his discharge from his office.

Office how vacated.

71. A trustee may be discharged from his office only as follows:—

Discharge of trustee.

(a) by the extinction of the trust;

(b) by the completion of his duties under the trust;

(c) by such means as may be prescribed by the instrument of trust;

(d) by appointment under this Act of a new trustee in his place;

(e) by consent of himself and the beneficiary, or, where there are more beneficiaries than one, all the beneficiaries being competent to contract, or

(f) by the Court to which a petition for his discharge is presented under this Act.

72. Notwithstanding the provisions of section II, every trustee may apply by petition to a principal Civil Court of original jurisdiction to be discharged from his office; and,

Petition to be dis-
charged from trust.

if the Court finds that there is sufficient reason for such discharge, it may discharge him accordingly, and direct his costs to be paid out of the trust property. But where there is no such reason the Court shall not discharge him, unless a proper person can be found to take his place.

73. Whenever any person appointed a trustee disclaims, or any trustee, either original or substituted, dies, or is for a continuous period of six months absent from the State, or leaves the State for the purpose of residing abroad, or is declared an insolvent, or desires to be discharged from the trust or refuses or becomes in the opinion of a principal Civil Court of original jurisdiction, unfit or personally incapable to act in the trust, or accepts an inconsistent trust, a new trustee may be appointed in his place by—

(a) the person nominated for that purpose by the instrument of trust (if any), or

(b) if there be no such person, or no such person able and willing to act, the author of the trust if he be alive and competent to contract, or the surviving or continuing trustees or trustee for the time being, or legal representative of the last surviving and continuing trustee, or (with the consent of the Court), the retiring trustees, if they all retire simultaneously, or (with the like consent) the last retiring trustee.

Every such appointment shall be by writing under the hand of the person making it.

On an appointment of a new trustee the number of trustees may be increased.

The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee if willing to act in the execution of the power.

74. Whenever any such vacancy or disqualification occurs and it is found impracticable to appoint a new trustee under section 73, the beneficiary may, without instituting a suit, apply by petition to a principal Civil Court of original jurisdiction for the appointment of a trustee, or a new trustee, and the Court may appoint a trustee or a new trustee accordingly.

In appointing new trustees, the Court shall have regard

Rules for selecting new trustees.

(a) to the wishes of the author of the trust as expressed in or to be inferred from the instrument of trust; (b) to the wishes of the person, if any, empowered to appoint new trustees; (c) to the question whether the appointment will promote or impede the execution of the trust, and (d) where there are more bene-

ficiaries than one, to the interests of all such beneficiaries.

75. Whenever any new trustee is appointed under section 73 or section 74, all the trust-property for the time being vested in the surviving or continuing trustees or trustee, or in the legal representative of any trustee, shall become vested in such new trustee, either solely or jointly with the surviving or continuing trustees or trustee, as the case may require.

Every new trustee so appointed, and every trustee appointed by a Court either before or after the passing of this Act, shall have the same powers, authorities and discretions, and shall in all respects act, as if he had been originally nominated a trustee by the author of the trust.

76. On the death or discharge of one of several co-trustees, the trust survives and the trust-property passes to the others, unless the instrument of trust expressly declares otherwise.

CHAPTER VIII.

OF THE EXTINCTION OF TRUSTS.

Trust how extinguished.

77. A trust is extinguished—

- (a) when its purpose is completely fulfilled; or ✓
- (b) when its purpose becomes unlawful; or ✓
- (c) when the fulfilment of its purpose becomes impossible by destruction of the trust-property or otherwise; or
- (d) when the trust, being revocable, is expressly revoked. ✓

Revocation of trust.

78. A trust created by will may be revoked at the pleasure of the testator. ✓

A trust otherwise created can be revoked only—

- (a) where all the beneficiaries are competent to contract—by their consent; ✓
- (b) where the trust has been declared by a non-testamentary instrument or by word of mouth—in exercise of a power of revocation expressly reserved to the author of the trust; or ✓
- (c) where the trust is for the payment of the debts of the author of the trust, and has not been communicated to the creditors—at the pleasure of the author of the trust. ✓

Illustration.

A conveys property to B in trust to sell the same and pay out of the proceeds the claims of A's creditors. A reserves no power of revocation. If no communication has been made to the creditors, A may revoke the trust. But if the creditors are parties to the arrangement, the trust cannot be revoked without their consent.

79. No trust can be revoked by the author of the trust so as to defeat or prejudice what the trustees may have duly done in execution of the trust.

Revocation not to defeat what trustees have duly done.

CHAPTER IX.

OF CERTAIN OBLIGATIONS IN THE NATURE OF TRUSTS.

80. An obligation in the nature of a trust is created in the following cases.

Where obligation in nature of trust is created.

81. Where the owner of property transfers or bequeaths it and it cannot be inferred consistently with the attendant circumstances that he intended to dispose of the beneficial interest therein, the transferee or legatee must hold such property for the benefit of the owner or his legal representative.

Where it does not appear that transferor intended to dispose of beneficial interest.

Illustrations.

(a) A conveys land to B without consideration and declares no trust of any part. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in the land. B holds the land for the benefit of A.

(b) A conveys to B two fields, Y and Z, and declares a trust of Y but says nothing about Z. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in Z. B holds Z for the benefit of A.

(c) A transfers certain stock belonging to him into the joint names of himself and B. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in the stock during his life. A and B hold the stock for the benefit of A during his life.

(d) A makes a gift of certain land to his wife B. She takes the beneficial interest in the land free from any trust in favour of A, for it may be inferred from the circumstances that the gift was for B's benefit.

82. Where property is transferred to one person for a consideration paid or provided by another person and it appears that such other person did not intend to pay or provide such consideration for the benefit of the trans-

Transfer to one for consideration paid by another.

feree, the transferee must hold the property for the benefit of the person paying or providing the consideration.

Nothing in this section shall be deemed to affect, the Code of Civil Procedure, section 66.

83. Where a trust is incapable of being executed, or where the trust is completely executed without exhausting the trust-property, the trustee, in the absence of a direction to the contrary, must hold the trust-property, or so much thereof as is unexhausted, for the benefit of the author of the trust or his legal representative.

Trust incapable of execution or executed without exhausting trust-property.

Illustrations.

(a) A conveys certain land to B—

“upon trust,” and no trust is declared; or
“upon trust to be thereafter declared,” and no such declaration is ever made; or

upon trusts that are too vague to be executed; or

upon trusts that become incapable of taking effect; or

“in trust for C,” and C renounces his interest under the trust.

In each of these cases B holds the land for the benefit of A.

(b) A transfers Rs. 10,000 in the four per cents. to B in trust to pay the interest annually accruing due to C for her life. A dies, then C dies. B holds the fund for the benefit of A's legal representative.

(c) A conveys land to B upon trust to sell it and apply one moiety of the proceeds for certain charitable purposes, and the other for the maintenance of the worship of an idol. B sells the land, but the charitable purposes wholly fail, and the maintenance of the worship does not exhaust the second moiety of the proceeds. B holds the first moiety and the part unapplied of the second moiety for the benefit of A or his legal representative.

(d) A bequeaths Rs. 10,000 to B to be laid out in buying land to be conveyed for purposes which either wholly or partially fail to take effect. B holds for the benefit of A's legal representative the undisposed of interest in the money or land if purchased.

84. When the owner of property transfers it to another for an illegal purpose and such purpose is not carried into execution, or the transferor is not as guilty as the transferee, or the effect of permitting the transferee to retain the property might be to defeat the provisions of any law, the transferee must hold the property for the benefit of the transferor.

Transfer for illegal purpose.

85. Where a testator bequeaths certain property upon trust and the purpose of the trust appears on the face of the will to be unlawful, or during the testator's lifetime the legatee agrees with him to apply the property for an unlawful purpose, the legatee must hold the property for the benefit of the testator's legal representative.

Bequest for illegal purpose.

Where property is bequeathed and the revocation of the bequest is prevented by coercion, the legatee must hold the property for the benefit of the testator's legal representative.

86. Where property is transferred in pursuance of a contract which is liable to rescission or induced by fraud or mistake, the transferee must, on receiving notice to that effect, hold the property for the benefit of the transferor, subject to repayment by the latter of the consideration actually paid.

87. Where a debtor becomes the executor or other legal representative of his creditor, he must hold the debt for the benefit of the persons interested therein.

88. Where a trustee, executor, partner, agent, director of a company, legal adviser, or other person bound in a fiduciary character to protect the interests of another person, by availing himself of his character gains for himself any pecuniary advantage, or where any person so bound enters into any dealings under circumstances in which his own interests are, or may be, adverse to those of such other person and thereby gains for himself a pecuniary advantage, he must hold for the benefit of such other person the advantage so gained.

Illustrations.

(a) A, an executor, buys at an undervalue from B, a legatee, his claim under the will. B is ignorant of the value of the bequest. A must hold for the benefit of B the difference between the price and value.

(b) A, a trustee, uses the trust-property for the purpose of his own business. A holds for the benefit of his beneficiary the profits arising from such use.

(c) A, a trustee, retires from his trust in consideration of his successor paying him a sum of money. A holds such money for the benefit of his beneficiary.

(d) A, a partner, buys land in his own name with funds belonging to the partnership. A holds such land for the benefit of the partnership.

(e) A, a partner, employed on behalf of himself and his co-partners in negotiating the terms of a lease, clandestinely stipulates with the lessor for payment to himself of a lakh of rupees. A holds the lakh for the benefit of the partnership.

(f) A and B are partners. A dies. B, instead of winding up the affairs of the partnership, retains all the assets in the business. B must account to A's legal representative for the profits arising from A's share of the capital.

(g) A, an agent employed to obtain a lease for B, obtains the lease for himself. A holds the lease for the benefit of B.

(h) A, a guardian, buys up for himself incumbrances on his ward B's estate at an undervalue. A holds for the benefit of B the incumbrances so bought, and can only charge him with what he has actually paid.

89. Where, by the exercise of undue influence, any advantage is gained in derogation of the interests of another, the person gaining such advantage without consideration, or with notice that such influence has been exercised, must hold the advantage for the benefit of the person whose interests have been so prejudiced.

Advantage gained by exercise of undue influence.

90. Where a tenant for life, co-owner, mortgagee or other qualified owner of any property, by availing himself of his position as such, gains an advantage in derogation of the rights of the other persons interested in the property, or where any such owner, as representing all persons interested in such property, gains any advantage, he must hold, for the benefit of all persons so interested, the advantage so gained, but subject to repayment by such persons of their due share of the expenses properly incurred, and to an indemnity by the same persons against liabilities properly contracted, in gaining such advantage.

Advantage gained by qualified owner.

Illustrations.

(a) A, the tenant for life of leasehold property, renews the lease in his own name and for his own benefit. A holds the renewed lease for the benefit of all those interested in the old lease.

(b) A village belongs to a Hindu family. A, one of its members, pays nazrana to Government and thereby procures his name to be entered as the inamdar of the village. A holds the village for the benefit of himself and the other members.

(c) A mortgages land to B, who enters into possession. B allows the Government revenue to fall into arrear with a view to the land being put up for sale and his becoming himself the purchaser of it. The land is accordingly sold to B. Subject to the repayment of the amount due on the mortgage and of his expenses properly incurred as mortgagee, B holds the land for the benefit of A.

91. Where a person acquires property with notice that another person has entered into an existing contract affecting that property, of which specific performance could be enforced, the former must hold the property for the benefit of the latter to the extent necessary to give effect to the contract.

Property acquired with notice of existing contract.

92. Where a person contracts to buy property to be held on trust for certain beneficiaries and buys the property accordingly, he must hold the property for their benefit to the extent necessary to give effect to the contract.

Purchase by person contracting to buy property to be held on trust.

93. Where creditors compound the debts due to them, and one of such creditors, by a secret arrangement with the debtor, gains an undue advantage over his co-creditors, he must hold for the benefit of such creditors the advantage so gained.

[Advantage] secretly gained by one of several compounding creditors.

94. In any case not coming within the scope of any of the preceding sections, where there is no trust, but the person having possession of property has not the whole beneficial interest therein, he must hold the property for the benefit of the persons having such interest, or the residue thereof, (as the case may be), to the extent necessary to satisfy their just demands.

Constructive trusts in cases not expressly provided for.]

Illustrations.

(a) A, an executor, distributes the assets of his testator B to the legatees without having paid the whole of B's debts. The legatees hold for the benefit of B's creditors, to the extent necessary to satisfy their just demands, the assets so distributed.

(b) A by mistake assumes the character of a trustee for B, and under colour of the trust receives certain money. B may compel him to account for such money.

(c) A makes a gift of a lakh of rupees to B, reserving to himself, with B's assent, power to revoke at pleasure the gift as to Rs. 10,000. The gift is void as to Rs. 10,000, and B holds that sum for the benefit of A.

95. The person holding property in accordance with any of the preceding sections of this chapter must, so far as may be, perform the same duties, and is subject, so far as may be, to the same liabilities and disabilities, as if he were a trustee of the property for the person for whose benefit he holds it:

Obligor's liabilities and disabilities.

Provided that (a) where he rightfully cultivates the property or employs it in trade or business, he is entitled to reasonable remuneration for his trouble, skill and loss of time in such cultivation or employment; and (b) where he holds the property by virtue of a contract with the person for whose benefit he holds it, or with any one through whom such person claims, he may, without the permission of the Court, buy or become lessee or mortgagee of the property or any part thereof.

96. Nothing contained in this chapter shall impair the rights of transferees in good faith for consideration, or create an obligation in evasion of any law for the time being in force.

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THE TRANSFER OF PROPERTY ACT, 1977.**Act No. XLII of 1977.**

[Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No. 8372, dated 11th September, 1920 and State Council Resolution No. 1, dated 8th April 1925. (Notifications No. 14-L/81).]

An Act to amend the law relating to the Transfer of Property by act of parties.

WHEREAS it is expedient to define and amend certain parts of the law relating to the transfer of property by act of parties; It is hereby enacted as follows:—

Preamble.

CHAPTER I.**PRELIMINARY.**

¹1. Omitted.

2. Nothing herein contained shall be deemed to affect—

Saving of certain enactments, incidents, rights, liabilities, etc.

(a) the provisions of any enactment not hereby expressly repealed:

(b) any terms or incidents of any contract or constitution of property which are consistent with the provisions of this Act and are allowed by the law for the time being in force:

(c) any right or liability arising out of a legal relation constituted before this Act comes into force, or any relief in respect of any such right or liability: or

(d) save as provided by section 57 and Chapter IV of this Act any transfer by operation of law or by, or in execution of, a decree or order of a Court of competent jurisdiction:

and nothing in the second chapter of this Act shall be deemed to affect any rule of Hindu, Muhammadan or Buddhist law, subject to the limitation contained in sections 13, 14, 15, 16 and 20, no disposition of property made by a Hindu shall be invalid by reason only that the person for whose benefit it may have been made was not in existence at the date of such disposition.

¹Short title, extent and commencement are given and regulated by Act IV of 1977

Interpretation clause.

3. In this Act unless there is something repugnant in the subject or context,—
 “immovable property” does not include standing timber, growing crops or grass:

“instrument” means a non-testamentary instrument:

“attested” in relation to an instrument means attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the instrument, or has seen some other person sign the instrument in the presence and by the direction of the executant, or has received from the executant a personal acknowledgement of his signature or mark or of the signature of such other person, and each of whom has signed the instrument in the presence of the executant; but it shall not be necessary that more than one of such witnesses shall have been present at the same time, and no particular form of attestation shall be necessary.]

“registered” means registered in the State under the law for the time being in force regulating the registration of documents:

“attached to the earth” means—

(a) rooted in the earth, as in the case of trees and shrubs;
 (b) imbedded in the earth, as in the case of walls or buildings; or

(c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached:

“actionable claim” means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent;

[a person is said to have “notice” of a fact when he actually knows that fact, or when, but for wilful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it.

EXPLANATION I. Where any transaction relating to immovable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, where the property is not all situated in one sub-district, or where the instrument has been registered under sub-section (2) of section 30 of the Registration Act, from the

¹In section 3 definition of “attested” added and definition of “notice” substituted vide Act VI of 1996 published in the Government Gazette dated 24th Sawan 1996.

earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property which is being acquired, or of the property wherein a share or interest is being acquired, is situated.

EXPLANATION II. Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.

EXPLANATION III. A person shall be deemed to have had notice of any fact if his agent acquires notice thereof whilst acting on his behalf in the course of business to which that fact is material:

Provided that, if the agent fraudulently conceals the fact, the principal shall not be charged with notice thereof as against any person who was a party to or otherwise cognizant of the fraud.]

4. The chapters and sections of this Act which relate to contracts shall be taken as part of the Contract Act.

Enactments relating to contracts to be taken as part of Contract Act.

And sections 54, paragraphs 2 and 3, 59, 107 and 123 shall be read as supplemental to the Registration Act.

CHAPTER II.

OF TRANSFERS OF PROPERTY BY ACT OF PARTIES.

(A) *Transfer of Property, whether movable or immovable.*

15. In the following sections "transfer of property" means an act by which a living person conveys property in present or in future, to one or more persons, whether living or unborn or to himself, ¹[or to himself] and one or more other such persons; and "to transfer property" is to perform such act.

"Transfer of property" defined.

¹[In this section living person includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals.]

¹In section 5 words "or to himself" inserted after the words "or to himself" and paragraph added *vide* Act VI of 1996 published in the Government Gazette dated 26th Sawan 1996.

6. Property of any kind may be transferred, except as ^{What may be trans-} otherwise provided by this Act or by any ^{ferred.} other law for the time being in force.

(a) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred.

(b) A mere right of re-entry for breach of a condition subsequent cannot be transferred to any one except the owner of the property affected thereby.

(c) An easement cannot be transferred apart from the dominant heritage.

(d) An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him.

¹[(dd) A right to future maintenance in whatsoever manner arising, secured or determined, cannot be transferred.]

(e) A mere right to sue cannot be transferred.

(f) A public office cannot be transferred, nor can the salary of a public officer, whether before or after it has become payable.

(g) Stipends allowed to military and civil pensioners of Government and political pensions cannot be transferred.

(h) No transfer can be made (1) in so far as it is opposed to the nature of the interest affected thereby, or (2) for an unlawful object or consideration within the meaning of section 23 of the Contract Act or (3) to a person legally disqualified to be transferee.

(i) Nothing in this section shall be deemed to authorise a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue or the lessee of an estate under the management of a Court of Wards to assign his interest as such tenant, farmer or lessee.

7. Every person competent to contract and entitled to ^{Persons competent to transfer.} transferable property, or authorised to dispose of transferable property not his own, is competent to transfer such property either wholly or in part, and either absolutely or conditionally, in the circumstances, to the extent and in the manner allowed and prescribed by any law for the time being in force.

8. Unless a different intention is expressed or necessarily implied, a transfer of property passes forth-^{Operation of transfer.} with to the transferee all the interest which the transferor is then capable of passing in the property, and

¹In section 6 clause (dd) added *vide* Act VI of 1996 published in the Government Gazette dated 26th Sawan 1996.

in the legal incidents thereof. ✓

Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth; ✓

and, where the property is machinery attached to the earth, the movable parts thereof;

and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows, and all other things provided for permanent use therewith;

and, where the property is a debt or other actionable claim, the securities therefor (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer;

and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect.

9. A transfer of property may be made without writing in every case in which a writing is not expressly required by law.

Oral transf .

10. Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his

Condition restraining alienation.

interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him: Provided that property may be transferred to or for the benefit of a woman, so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein.

11. Where, on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction.

Restriction repugnant to interest created.

1[Where any such direction has been made in respect of one piece of immovable property for the purpose of securing the beneficial enjoyment of another piece of such property, nothing in this section shall be deemed to affect any right which the transferor may have to enforce such direction or any remedy which he may have in respect of a breach thereof.]

¹In section 11 second paragraph substituted vide Act VI of 1996 published in the Government Gazette dated 26th Sawan 1996.

12. Where property is transferred subject to a condition or limitation making any interest therein, reserved or given to or for the benefit of any person, to cease on his becoming insolvent or endeavouring to transfer or dispose of the same, such condition or limitation is void.

Condition making interest determinable on insolvency or attempted alienation.

Nothing in this section applies to a condition in a lease for the benefit of the lessor or those claiming under him.

13. Where, on a transfer of property, an interest therein is created for the benefit of a person not in existence at the date of the transfer, subject to a prior interest created by the same transfer, the interest created for the benefit of such person shall not take effect, unless it extends to the whole of the remaining interest of the transferor in the property.

Transfer for benefit of unborn person.

Illustration.

A transfers property of which he is the owner to B in trust for A and his intended wife successively for their lives, and after the death of the survivor, for the eldest son of the intended marriage for life, and after his death for A's second son. The interest so created for the benefit of the eldest son does not take effect, because it does not extend to the whole of A's remaining interest in the property.

14. No transfer of property can operate to create an interest which is to take effect after the life-time of one or more persons living at the date of such transfer, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the interest created is to belong.

Rule against perpetuity.

15. If on a transfer of property, an interest therein is created for the benefit of a class of persons with regard to some of whom such interest fails by reason of any of the rules contained in sections 13 and 14, such interest fails

Transfer to class some of whom come under sections 13 and 14.

¹[in regard to those persons only and not in regard to the whole class.]

16. Where, by reason of any of the rules contained in sections 13 and 14, an interest created for the benefit of a person or of a class of persons fails in regard to such person or the whole of such class, any interest created in the same transaction and intended to take effect after or upon failure of such prior interest also fails.]

Transfer to take effect on failure of prior interest.

¹In section 15 last words substituted for "as regards the whole class" vide Act VI of 1996 published in the Government Gazette dated 26th Sawan 1996.

²Sections 16, 17 and 18 substituted vide Act VI of 1996 published in the Government Gazette dated 26th Sawan 1996.

¹[17. (1) Where the terms of transfer of property direct that the income arising from the property shall be accumulated either wholly or in part during a period longer than:—

Direction for accumulation.

(a) the life of the transferor, or

(b) a period of eighteen years from the date of the transfer,

such direction shall, save, as hereinafter provided, be void to the extent to which the period during which the accumulation is directed exceeds the longer of the aforesaid periods, and at the end of such last mentioned period the property and the income thereof shall be disposed of as if the period during which the accumulation has been directed to be made had elapsed.

(2) This section shall not affect any direction for accumulation for the purpose of—

(i) the payment of the debts of the transferor or any other person taking any interest under the transfer, or

(ii) the provision of portions for children or remoter issue of the transferor or of any other person taking any interest under the transfer, or

(iii) the preservation or maintenance of the property transferred,

and such direction may be made accordingly.]

¹[18. The restrictions in sections 14, 16 and 17 shall not apply in the case of a transfer of property for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety or any other object beneficial to human or other living being.]

19. Where, on a transfer of property, an interest therein is created in favour of a person without specifying the time when it is to take effect, or in terms specifying that it is to take effect forthwith or on the happening of an event which must happen, such interest is vested, unless a contrary intention appears from the terms of the transfer.

Vested interest.

A vested interest is not defeated by the death of the transferee before he obtains possession.

EXPLANATION.—An intention that an interest shall not be vested is not to be inferred merely from a provision whereby the enjoyment thereof is postponed, or whereby a prior interest in the same property is given or reserved to some other person, or whereby income arising from the property is directed to be accumulated until the time of enjoyment arrives or from a provision that if a particular event shall happen the interest shall pass to another person.

¹See footnote under section 16.

20. Where, on a transfer of property, an interest therein is created for the benefit of a person not then living, he acquires upon his birth, unless a contrary intention appear from the terms of the transfer, a vested interest, although he may not be entitled to the enjoyment thereof immediately on his birth.

When unborn person acquires vested interest on transfer for his benefit.

21. Where, on a transfer of property, an interest therein is created in favour of a person to take effect only on the happening of a specified uncertain event, or if a specified uncertain event shall not happen, such person thereby acquires a contingent interest in the property. Such interest becomes a vested interest in the former case, on the happening of the event, in the latter, when the happening of the event becomes impossible.

Contingent interest.

EXCEPTION.—Where, under a transfer of property, a person becomes entitled to an interest therein upon attaining a particular age, and the transferor also gives to him absolutely the income to arise from such interest before he reaches that age, or directs the income or so much thereof as may be necessary to be applied for his benefit, such interest is not contingent.

22. Where, on a transfer of property, an interest therein is created in favour of such members only of a class as shall attain a particular age, such interest does not vest in any member of the class who has not attained that age.

Transfer to members of a class who attain a particular age.

23. Where, on a transfer of property, an interest therein is to accrue to a specified person if a specified uncertain event shall happen and no time is mentioned for the occurrence of that event, the interest fails unless such event happens before, or at the same time as, the intermediate or precedent interest ceases to exist.

Transfer contingent on happening of specified uncertain event.

24. Where, on a transfer of property, an interest therein is to accrue to such of certain persons as shall be surviving at some period, but the exact period is not specified, the interest shall go to such of them as shall be alive when the intermediate or precedent interest ceases to exist, unless a contrary intention appears from the terms of the transfer.

Transfer to such of certain persons as survive at some period, not specified.

Illustration.

A transfers property to B for life, and after his death to C and D equally to be divided between them; or to the survivor of them. C dies during the life of B. D survives B. At B's death the property passes to D.

25. An interest created on a transfer of property and dependent upon a condition fails if the fulfilment of the condition is impossible, or is forbidden by law, or is of such a nature that, if permitted, it would defeat the provisions of any law or is fraudulent, or involves or implies injury to the person or property of another, or the Court regards it as immoral or opposed to public policy.

Conditional transfer.

Illustrations.

(a) A lets a farm to B on condition that he shall walk a hundred miles in an hour. The lease is void.

(b) A gives Rs. 500 to B on condition that he shall marry A's daughter C. At the date of the transfer C was dead. The transfer is void.

(c) A transfers Rs. 500 to B on condition that she shall murder C. The transfer is void.

(d) A transfers Rs. 500 to his niece C if she will desert her husband. The transfer is void.

26. Where the terms of a transfer of property impose a condition to be fulfilled before a person can take an interest in the property, the condition shall be deemed to have been fulfilled if it has been substantially complied with.

Fulfilment of condition
precedent.

Illustrations.

(a) A transfers Rs. 5,000 to B on condition that he shall marry with the consent of C, D and E. E dies. B marries with the consent of C and D. B is deemed to have fulfilled the condition.

(b) A transfers Rs. 5,000 to B on condition that he shall marry with the consent of C, D and E. B marries without the consent of C, D and E, but obtained their consent after the marriage. B has not fulfilled the condition.

27. Where, on a transfer of property, an interest therein is created in favour of one person, and by the same transaction an ulterior disposition of the same interest is made in favour of another, if the prior disposition under the transfer shall fail, the ulterior disposition shall take effect upon the failure of the prior disposition, although the failure may not have occurred in the manner contemplated by the transferor.

Conditional transfer to one person coupled with transfer to another on failure of prior disposition.

But, where the intention of the parties to the transaction is that the ulterior disposition shall take effect only in the event of the prior disposition failing in a particular manner, the ulterior disposition shall not take effect unless the prior disposition fails in that manner.

Illustrations.

(a) A transfers Rs. 500 to B on condition that he shall execute a certain lease within three months after A's death, and, if he should neglect to do so, to

C. B dies in A's life-time. The disposition in favour of C takes effect.

(b) A transfers property to his wife; but, in case she should die in his life-time, transfers to B that which he had transferred to her. A and his wife perish together under circumstances which make it impossible to prove that she died before him. The disposition in favour of B does not take effect.

28. On a transfer of property an interest therein may be created to accrue to any person with the condition superadded that in case a specified uncertain event shall happen such interest shall pass to another person, or that in case a specified uncertain event shall not happen such interest shall pass to another person. In each case the dispositions are subject to the rules contained in sections 10, 12, 21, 22, 23, 24, 25 and 27.

29. An ulterior disposition of the kind contemplated by the last preceding section cannot take effect unless the condition is strictly fulfilled.

Uterior transfer conditional on happening or not happening of specified event.

Fulfilment of condition subsequent.

Illustration.

A transfers Rs. 500 to B, to be paid to him on his attaining his majority or marrying, with a proviso that, if B dies a minor or marries without C's consent, the Rs. 500 shall go to D. B marries when only 17 years of age, without C's consent. The transfer to D takes effect.

Prior disposition not affected by invalidity of ulterior disposition.

30. If the ulterior disposition is not valid, the prior disposition is not affected by it.

Illustration.

A transfers a farm to B for her life, and, if she does not desert her husband, the C. B is entitled to the farm during her life as if no condition had been inserted.

31. Subject to the provisions of section 12, on a transfer of property an interest therein may be created with the condition superadded that it shall cease to exist in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Condition that transfer shall cease to have effect in case specified uncertain event happens or does not happen.

pen.

Illustrations.

(a) A transfers a farm to B for his life, with a proviso that, in case B cuts down a certain wood, the transfer shall cease to have any effect. B cuts down the wood. He loses his life-interest in the farm.

(b) A transfers a farm to B, provided that, if B shall not go to England within three years after the date of the transfer, his interest in the farm shall cease. B does not go to England within the term prescribed. His interest in the farm ceases.

32. In order that a condition that an interest shall cease to exist may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of the creation of an interest.

Such condition must not be invalid.

33. Where, on a transfer of property, an interest therein is created subject to a condition that the person taking it shall perform a certain act but no time is specified for the performance of the act, the condition is broken when he renders impossible, permanently or for an indefinite period, the performance of the act.

Transfer conditional on performance of act, no time being specified for performance.

34. Where an act is to be performed by a person either as a condition to be fulfilled before an interest created on a transfer of property is enjoyed by him, or as a condition on the non-fulfilment of which the interest is to pass from him to another person, and a time is specified for the performance of the act, if such performance within the specified time is prevented by the fraud of a person who would be directly benefited by non-fulfilment of the condition, such further time shall as against him be allowed for performing the act as shall be requisite to make up for the delay caused by such fraud. But if no time is specified for the performance of the act, then, if its performance is by the fraud of a person interested in the non-fulfilment of the condition rendered impossible or indefinitely postponed, the condition shall as against him be deemed to have been fulfilled.

Transfer conditional on performance of act, time being specified.

Election.

35. Where a person professes to transfer property which he has no right to transfer, and as part of the same transaction confers any benefit on the owner of the property, such owner must elect either to confirm such transfer or to dissent from it; and in the latter case he shall relinquish the benefit so conferred, and the benefit so relinquished shall revert to the transferor or his representative as if it had not been disposed of, subject nevertheless,

Election when necessary.

where the transfer is gratuitous, and the transferor has, before the election, died or otherwise become incapable of making a fresh transfer,

and in all cases where the transfer is for consideration, to the charge of making good to the disappointed transferee the amount or value of the property attempted to be transferred to him.

Illustration.

The farm of Sultanpur is the property of C and worth Rs. 800. A by an instrument of gift professes to transfer it to B giving by the same instrument Rs. 1,000 to C. C elects to retain the farm. He forfeits the gift of Rs. 1,000.

In the same case, A dies before the election. His representative must out of the Rs. 1,000 pay Rs. 800 to B.

The rule in the first paragraph of this section applies whether the transferor does or does not believe that which he professes to transfer to be his own.

A person taking no benefit directly under a transaction, but deriving a benefit under it indirectly, need not elect.

A person who in his own capacity takes a benefit under the transaction may in another dissent therefrom.

EXCEPTION TO THE LAST PRECEDING FOUR RULES.—Where a particular benefit is expressed to be conferred on the owner of the property which the transferor professes to transfer, and such benefit is expressed to be in lieu of that property, if such owner claim the property, he must relinquish the particular benefit, but he is not bound to relinquish any other benefit conferred upon him by the same transaction.

Acceptance of the benefit by the person on whom it is conferred constitutes an election by him to confirm the transfer, if he is aware of his duty to elect and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives enquiry into the circumstances.

Such knowledge or waiver shall, in the absence of evidence to the contrary, be presumed, if the person on whom the benefit has been conferred has enjoyed it for two years without doing any act to express dissent.

Such knowledge or waiver may be inferred from any act of his which renders it impossible to place the persons interested in the property professed to be transferred in the same condition as if such act had not been done.

Illustration.

A transfers to B an estate to which C is entitled, and as part of the same transaction gives C a coal-mine. C takes possession of the mine and exhausts it. He has thereby confirmed the transfer of the estate to B.

If he does not within one year after the date of the transfer signify to the transferor or his representatives his intention to confirm or to dissent from the transfer, the transferor or his representatives may, upon the expiration of that period, require him to make his election; and, if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the transfer.

In case of disability, the election shall be postponed until

the disability ceases, or until the election is made by some competent authority.

Apportionment.

36. In the absence of a contract or local usage to the contrary, all rents, annuities, pensions, dividends and other periodical payments in the nature of income shall, upon the transfer of the interest of the person entitled to receive such payments, be deemed, as between the transferor and transferee, to accrue due from day to day, and to be apportionable accordingly, but to be payable on the days appointed for the payment thereof.

37. When, in consequence of a transfer, property is divided and held in several shares, and thereupon the benefit of any obligation relating to the property as a whole passes from one to several owners of the property, the corresponding duty shall, in the absence of a contract to the contrary amongst the owners, be performed in favour of each of such owners in proportion to the value of his share in the property, provided that the duty can be severed and that the severance does not substantially increase the burden of the obligation; but if the duty cannot be severed, or if the severance would substantially increase the burden of the obligation, the duty shall be performed for the benefit of such one of the several owners as they shall jointly designate for that purpose:

Provided that no person on whom the burden of the obligation lies shall be answerable for failure to discharge it in manner provided by this section, unless and until he has had reasonable notice of the severance.

Nothing in this section applies to leases for agricultural purposes unless and until His Highness by notification in the State Gazette so directs.

Illustrations.

(a) A sells to B, C and D a house situate in a village and leased to E at an annual rent of Rs. 30 and delivery of one fat sheep, B having provided half purchase money and C and D one quarter each. E, having notice of this, must pay Rs. 15 to B, Rs. 7½ to C, and Rs. 7½ to D and must deliver the sheep according to the joint direction of B, C and D.

(b) In the same case, each house in the village being bound to provide ten days' labour each year on a dyke to prevent inundation, E had agreed as a term of his lease to perform this work for A. B, C and D severally require E to perform the ten days' work due on account of the house of each. E is not bound to do more than ten days' work to all, according to such directions as B, C and D may join in giving.

(B) *Transfer of Immovable Property.*

38. Where any person, authorised only under circumstances in their nature variable to dispose of immovable property, transfers such property, for consideration, alleging the existence of such circumstances, they shall, as between the transferee on the one part and the transferor and other persons (if any) affected by the transfer on the other part, be deemed to have existed, if the transferee, after using reasonable care to ascertain the existence of such circumstances, has acted in good faith.

Transfer by person authorised only under certain circumstances to transfer.

Illustration.

A, a Hindu widow, whose husband has left collateral heirs alleging that the property held by her as such is insufficient for her maintenance, agrees, for purposes neither religious nor charitable, to sell a field, part of such property, to B. B satisfies himself by reasonable enquiry that the income of the property is insufficient for A's maintenance, and that the sale of the field is necessary, and, acting in good faith, buys the field from A. As between B on the one part and A and the collateral heirs on the other part, a necessity for the sale shall be deemed to have existed.

39. Where a third person has a right to receive maintenance or a provision for advancement or marriage from the profits of immovable property, and such property is transferred ¹[* * * *], the right may be enforced against the transferee, if he has notice ¹[thereof] or if the transfer is gratuitous; but not against a transferee for consideration and without notice of the right, nor against such property in his hands.

40. Where, for the more beneficial enjoyment of his own immovable property, a third person has, independently of any interest in the immovable property of another or of any easement thereon, a right to restrain the enjoyment ²[in a particular manner of the latter property], where a third person is entitled to the benefit of an obligation arising out of contract and annexed to the ownership of immovable property, but not amounting to an interest therein or easement thereon,

Burden of obligation imposing restriction on use of land.

For of obligation annexed to ownership but not amounting to interest or easement.

¹In section 39 words "with the intention of defeating such right" omitted and for the words "of such intention" the word "thereof" substituted; illustration omitted *vide* Act VI of 1996.

²In section 40 words in brackets substituted for the words "of the latter property or to compel its enjoyment in a particular manner" *vide* Act VI of 1996 published in Government Gazette dated 26th Sawan 1996.

such right or obligation may be enforced against a transferee with notice thereof or a gratuitous transferee of the property affected thereby, but not against a transferee for consideration and without notice of the right or obligation, nor against such property in his hands.

Illustration.

A contracts to sell Sultanpur to B. While the contract is still in force he sells Sultanpur to C, who has notice of the contract. B may enforce the contract against C to the same extent as against A.

41. Where, with the consent, express or implied, of the persons interested in immovable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorised to make it: provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.

42. Where a person transfers any immovable property, reserving power to revoke the transfer, and subsequently transfers the property for consideration to another transferee, such transfer operates in favour of such transferee (subject to any condition attached to the exercise of the power) as a revocation of the former transfer to the extent of the power.

Illustration.

A lets a house to B, and reserves power to revoke the lease if, in the opinion of a specified surveyor, B should make a use of it detrimental to its value. Afterwards A, thinking that such a use has been made, lets the house to C. This operates as a revocation of B's lease subject to the opinion to the surveyor as to B's use of the house having been detrimental to its value.

43. Where a person ¹[fraudulently or] erroneously represents that he is authorised to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists.

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.

¹ In section 43 words in brackets inserted vide Act VI of 1996 published in the Government Gazette dated 26th Sawan 1996.

Illustration.

A, a Hindu, who has separated from his father B, sells to C three fields, X, Y and Z, representing that A is authorised to transfer the same. Of these fields Z does not belong to A, it having been retained by B on the partition; but on B's dying A as heir obtains Z. C, not having rescinded the contract of sale, may require A to deliver Z to him.

44. Where one of two or more co-owners of immovable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires, as to such share or interest, and so far as is necessary to give effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting, at the date of the transfer, the share or interest so transferred.

Where the transferee of a share of a dwelling house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the house.

45. Where immovable property is transferred for consideration to two or more persons, and such consideration is paid out of a fund belonging to them in common, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interests to which they were respectively entitled in the fund; and, where such consideration is paid out of separate funds belonging to them respectively, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property in proportion to the shares of the consideration which they respectively advanced.

In the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively advanced, such persons shall be presumed to be equally interested in the property.

46. Where immovable property is transferred for consideration by persons having distinct interests therein, the transferor's area in the absence of a contract to the contrary, entitled to share in the consideration equally, where their interests in the property were of equal value, and, where such interests were of unequal value, proportionately to the value of their respective interests.

Illustrations.

(a) A, owning a moiety, and B and C, each a quarter share, of mauza Sultanpur, exchange an eighth share of that mauza for a quarter share of

mauza Lalpura. There being no agreement to the contrary, A is entitled to an eighth share in Lalpura, and B and C each to a sixteenth share in that mauza.

(b) A, being entitled to a life-interest in mauza Atrali and B and C to the reversion, sell the mauza for Rs. 1,000. A's life-interest is ascertained to be worth Rs. 600, the reversion Rs. 400. A is entitled to receive Rs. 600 out of the purchase money, B and C to receive Rs. 400.

47. Where several co-owners of immovable property transfer a share therein without specifying that the transfer is to take effect on any particular share or shares of the transferors, the transfer, as among such transferors, takes effect on such shares equally where the shares were equal, and, where they were unequal, proportionately to the extent of such shares.

Transfer by co-owners of share in common property.

Illustration.

A, the owner of an eight-anna share, and B and C, each the owner of a four-anna share, in mauza Sultanpur, transfer a two anna share in the mauza to D, without specifying from which of their several shares the transfer is made. To give effect to the transfer one anna share is taken from the share of A, and half an anna share from each of the shares of B and C.

48. Where a person purports to create by transfer at different times rights in or over the same immovable property, and such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created.

Priority of rights created by transfer.

49. Where immovable property is transferred for consideration, and such property or any part thereof is at the date of the transfer insured against loss or damage, by fire, the transferee, in case of such loss or damage, may, in the absence of a contract to the contrary, require any money which the transferor actually receives under the policy, or so much thereof as may be necessary, to be applied in reinstating the property.

Transferee's right under policy.

50. No person shall be chargeable with any rents or profits of any immovable property, which he has in good faith paid or delivered to any person of whom he in good faith held such property, notwithstanding it may afterwards appear that the person to whom such payment or delivery was made had no right to receive such rents or profits.

Rent bona fide paid to holder under defective title.

Illustration.

A lets a field to B at a rent of Rs. 50, and then transfers the field to C. B having no notice of the transfer, in good faith pays the rent to A. B is not chargeable with the rent so paid.

51. When the transferee of immovable property makes any improvement on the property, believing in good faith that he is absolutely entitled thereto, and he is subsequently evicted therefrom by any person having a better title, the transferee has a right to require the person causing the eviction either to have the value of the improvement estimated and paid or secured to the transferee, or to sell his interest in the property to the transferee at the then market-value thereof irrespective of the value of such improvement.

The amount to be paid or secured in respect of such improvement shall be the estimated value thereof at the time of the eviction.

When, under the circumstances aforesaid, the transferee has planted or sown on the property crops which are growing when he is evicted therefrom, he is entitled to such crops and to free ingress and egress to gather and carry them.

52. During the [pendency] in any Court having authority in the State of [any] suit or proceeding [which is not collusive and] in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

[EXPLANATION. For the purposes of this section the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.]

53. (1) Every transfer of immovable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed.

¹In section 52 words "pendency" and "any" substituted for "active prosecution" and "a contentions" respectively; other words in brackets inserted and Explanation added vide Act VI of 1996 published in the Government Gazette dated 26th Sawan 1996.

²Section 53 substituted vide Act VI of 1996 published in the Government Gazette dated 26th Sawan 1996.

Nothing in this sub-section shall impair the rights of a transferee in good faith and for consideration.

Nothing in this sub-section shall affect any law for the time being in force relating to insolvency.

A suit instituted by a creditor (which term includes a decree-holder whether he has or has not applied for execution of his decree) to avoid a transfer on the ground that it has been made with intent to defeat or delay the creditors of the transferor, shall be instituted on behalf of, or for the benefit of, all the creditors.

(2) Every transfer of immovable property made without consideration with intent to defraud a subsequent transferee shall be voidable at the option of such transferee.

For the purposes of this sub-section, no transfer made without consideration shall be deemed to have been made with intent to defraud by reason only that a subsequent transfer for consideration was made.]

CHAPTER III.

OF SALES OF IMMOVABLE PROPERTY.

54. "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale" defined.

Such transfer, in the case of tangible immovable property or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

Sale how made.

A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties, but no such contract shall be valid, unless it is in writing, and signed by the parties.

Contract for sale.

It does not, of itself, create any interest in or charge on such property.

55. In the absence of a contract to the contrary, the buyer and seller of immovable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold:

(1) The seller is bound—

(a) to disclose to the buyer any material defect in the property [or in the [seller's title thereto] of which the seller

^{ad} ¹In section 55(1)(a) words in brackets inserted *vide* Act V I of 1996 published in the Government Gazette dated 26th Sawan 1996.

is, and the buyer is not, aware, and which the buyer could not with ordinary care discover;

(b) to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller's possession or power;

(c) answer to the best of his information all relevant questions put to him by the buyer in respect of the property or the title thereto;

(d) on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place;

(e) between the date of the contract of sale and the delivery of the property, to take as much care of the property and all documents of title relating thereto which are in his possession as an owner of ordinary prudence would take of such property and documents;

(f) to give, on being so required, the buyer, or such person as he directs, such possession of the property as its nature admits;

(g) to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all incumbrances on such property due on such date, and, except where the property is sold subject to incumbrances, to discharge all incumbrances on the property then existing.

(2) The seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists and that he has power to transfer the same:

Provided that, where the sale is made by a person in a fiduciary character, he shall be deemed to contract with the buyer that the seller has done no act whereby the property is encumbered or whereby he is hindered from transferring it.

The benefit of the contract mentioned in this rule shall be annexed to, and shall go with, the interest of the transferee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

(3) Where the whole of the purchase-money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating to the property which are in the seller's possession or power:

Provided that, (a) where the seller retains any part of the property comprised in such documents, he is entitled to retain them all, and, (b) where the whole of such property is sold to different buyers, the buyer of the lot of greatest value is entitled to such documents. But in case (a) the seller, and in case (b) the buyer of the lot of greatest value, is bound, upon

every reasonable request by the buyer, or by any of the other buyers, as the case may be, and at the cost of the person making the request, to produce the said documents and furnish such true copies thereof or extracts therefrom as he may require; and in the meantime, the seller, or the buyer of the lot of greatest value, as the case may be, shall keep the said documents safe, uncanceled and undefaced, unless prevented from so doing by fire or other inevitable accident.

(4) The seller is entitled—

(a) to the rents and profits of the property till the ownership thereof pass to the buyer;

(b) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money to a charge upon the property in the hands of the buyer '[any transferee without consideration or any transferee with notice of the non-payment] for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part '[from the date on which possession has been delivered.]

(5) The buyer is bound—

(a) to disclose to the seller any fact as to the nature or extent of the seller's interest in the property of which the buyer is aware but of which he has reason to believe that the seller is not aware, and which materially increases the value of such interest;

(b) to pay or tender, at the time and place of completing the sale, the purchase-money to the seller or such person as he directs: provided that, where the property is sold free from incumbrances, the buyer may retain out of the purchase-money the amount of any incumbrances on the property existing at the date of the sale, and shall pay the amount so retained to the persons entitled thereto;

(c) where the ownership of the property has passed to the buyer, to bear any loss arising from the destruction, injury or decrease in value of the property not caused by the seller;

(d) where the ownership of the property has passed to the buyer, as between himself and the seller, to pay all public charges and rent which may become payable in respect of the property, the principal moneys due on any incumbrances subject to which the property is sold, and the interest thereon afterwards accruing due.

(6) The buyer is entitled—

(a) where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof;

¹In section 55(4) (b) words in brackets inserted *vide* Act VI of 1996 published in the Government Gazette dated 26th Sawan 1996.

(b) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him ¹[*], to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.

An omission to make such disclosures as are mentioned in this section, paragraph (1), clause (a), and paragraph (5), clause (a), is fraudulent.

²[56. If the owner of two or more properties mortgages them to one person and then sells one or more of the properties to another person, the buyer is, in the absence of a contract to the contrary, entitled to have the mortgaged-debt satisfied out of the property or properties not sold to him, so far as the same will extend, but not so as to prejudice the rights of the mortgagee or persons claiming under him or of any other person who has for consideration acquired an interest in any of the properties.]

Marshalling by subsequent purchaser.

Discharge of incumbrances on Sale.

57. (a) Where immovable property subject to any incumbrance, whether immediately payable or not, is sold by the Court or in execution of a decree, or out of Court, the Court may, if it thinks fit, on the application of any party to the sale, direct or allow payment into Court,—

(1) in case of an annual or monthly sum charged on the property, or of a capital sum charged on a determinable interest in the property,—of such amount as, when invested in securities of the Government of India, or of the State the Court considers will be sufficient, by means of the interest thereof, to keep down or otherwise provide for that charge, and

(2) in any other case of a capital sum charged on the property,—of the amount sufficient to meet the incumbrance and any interest due thereon.

¹In section 55(6) (b) words "with notice of the payment" omitted vide Act VI of 1996 published in the Government Gazette dated 26th Sawan 1996.

²Section 56 substituted vide Act VI of 1996 published in the Government Gazette dated 26th Sawan 1996.

But in either case there shall also be paid into Court such additional amount as the Court considers will be sufficient to meet the contingency of further costs, expenses and interest, and any other contingency except depreciation of investments not exceeding one-tenth part of the original amount to be paid in, unless the Court for special reasons (which it shall record) thinks fit to require a larger additional amount.

(b) Thereupon the Court may, if it thinks fit, and after notice to the incumbrancer, unless the Court for reasons to be recorded in writing, thinks fit to dispense with such notice, declare the property to be freed from the incumbrance, and make any order for conveyance; or vesting order, proper for giving effect to the sale, and give directions for the retention and investment of the money in Court.

(c) After notice served on the persons interested in or entitled to the money or fund in Court, the Court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof.

(d) An appeal shall lie from any declaration, order or direction under this section as if the same were a decree.

(e) In this section "Court" means (1) the High Court in the exercise of extraordinary original civil jurisdiction, (2) the Court of a District Judge within the local limits of whose jurisdiction the property or any part thereof is situate, (3) any other Court which His Highness may, from time to time, by notification in the Jammu and Kashmir Government Gazette, declare, to be competent to exercise the jurisdiction conferred by this section.

CHAPTER IV.

OF MORTGAGES OF IMMOVABLE PROPERTY AND CHARGES.

58. (a) A mortgage is the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

The transferor is called a mortgagor, the transferee a mortgagee; the principal money and interest of which payment is secured for the time being are called the mortgage-

"Mortgage," "mortgagor," "mortgagee," "mortgage-money" and "mortgage-deed" defined.

money, and the instrument ¹[* *] by which the transfer is effected is called a mortgage-deed.

() Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money, and agrees, expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a simple mortgage and the mortgagee a simple mortgagee.

Mortgage by conditional sale.

(c) Where the mortgagor ostensibly sells the mortgaged property—
on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or
on condition that on such payment being made the sale shall become void, or
on condition that on such payment being made the buyer shall transfer the property to the seller,
the transaction is called a mortgage by conditional sale and the mortgagee a mortgagee by conditional sale.

¹[Provided that no such transaction shall be deemed to be a mortgage, unless the condition is embodied in the document which affects or purports to effect the sale.]

(d) Where the mortgagor delivers possession ¹[on expressly or by implication binds himself to deliver possession] of the mortgaged property to the mortgagee, and authorises him to retain such possession until payment of mortgage-money, and to receive the rents and profits accruing from the property ²[or any part of such rents and profits and to appropriate the same] in lieu of interest, or in payment of the mortgage-money, or partly in lieu of interest ³[or] partly in payment of the mortgage-money, the transaction is called an usufructuary mortgage and the mortgagee an usufructuary mortgagee.

Usufructuary mortgage.

59. A mortgage can be effected only by a registered instrument signed by the mortgagor and attested by at least two witnesses.

Mortgage when to be by assurance.

A person is said to attest a document when he signs it as a witness after seeing the executant sign it or on receiving from the executant or if the executant is a *parda nashin* female from herself after proper identification and acknowledgment that the executant has signed the document.

¹In section 58 in clause (a) "(if any)" omitted, proviso to clause (c) added and in clause (d) first words in brackets inserted *vide* Act VI of 1996 published in the Government Gazette dated 26th Sawan 1996.

²In section 58, clause (d) line seventh and eighth words in brackets substituted for the words "and to appropriate them" and in line ninth word "or" substituted for "and" *vide* Act VI of 1996 published in the Government Gazette dated 26th Sawan 1996.

Rights and Liabilities of Mortgagor.

160. At any time after the principal money has become [due], the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money, to require the mortgagee (a) to deliver ¹[to the mortgagor the mortgage-deed and all documents relating to the mortgaged-property which are in possession or power of the mortgagee], (b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (c) at the cost of the mortgagor either to re-transfer the mortgaged-property to him or to such third person as he may direct, or to execute and ¹[* *] to have registered an acknowledgment in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished:

Provided that the right conferred by this section has not been extinguished by act of the parties or by ¹[decree] of a Court.

The right conferred by this section is called a right to redeem and a suit to enforce it is called a suit for redemption.

Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass or no such time has been fixed, the mortgagee shall be entitled to reasonable notice before payment or tender of such money.

Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except ¹[only] where a mortgagee, or, if there are more mortgagees than one, all such mortgages, has or have acquired in whole or in part, the share of a mortgagor.

2[60-A.] (1) Where a mortgagor is entitled to redemption, then, on the fulfilment of any conditions on the fulfilment of which he would be entitled to require a re-transfer he may require the mortgagee, instead of re-transferring the property, to assign the mortgage-debt and transfer the mortgaged property to such third person as the

¹In section 60 "due" substituted for "payable," words in brackets in line five substituted for the words "the mortgage deed, if any, to the mortgagor", words "(where the mortgage has been effected by a registered deed)" omitted, word "decree" substituted for "under" and word "only" inserted *vide* Act VI of 1996 published in the Government Gazette dated 26th Sawan 1996.

²Sections 60-A and 60-B added and section 61 substituted *vide* Act VI of 1996.

mortgagor may direct; and the mortgagee shall be bound to assign and transfer accordingly.

(2) The rights conferred by this section belong to and may be enforced by the mortgagor or by any encumbrancer notwithstanding an intermediate encumbrance; but the requisition of any encumbrancer shall prevail over a requisition of the mortgagor and, as between encumbrancers, the requisition of a prior encumbrancer shall prevail over that of a subsequent encumbrancer.

(3) The provisions of this section do not apply in the case of a mortgagee who is or has been in possession.]

¹[**60-B.** A mortgagor, as long as his right of redemption subsists shall be entitled at all reasonable times, at his request and at his own cost, and on payment of the mortgagee's costs, and expenses in this behalf, to inspect and make copies or abstracts of, or extracts from, documents of title relating to the mortgaged property which are in the custody or power of the mortgagee.]

¹[**61.** A mortgagor who has executed two or more mortgages in favour of the same mortgagee shall, in the absence of a contract to the contrary, when the principal money of any two or more of the mortgages has become due, be entitled to redeem any one such mortgage separately, or any two or more of such mortgages together.]

62. In the case of a usufructuary mortgage, the mortgagor has a right to recover possession of the property ²[together with the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee,—]

(a) where the mortgagee is authorised to pay himself the mortgage-money from the rents and profits of the property, when such money is paid;

(b) where the mortgagee is authorised to pay himself from such rents and profits ³[or any part thereof a part only of the mortgage-money],—when the term (if any), prescribed for the payment of the mortgage-money has expired and the mortgagor pays or tenders to the mortgagee ⁴[the mortgage money or the balance thereof] or deposits it in Court as herein after provided.

¹ See footnote under section 60-A.

² Inserted *vide* Act VI of 1996.

³ Substituted for the words "the interest of the principal money" *vide* Act VI of 1996.

⁴ Substituted for the words "the principal money" *vide* Act VI of 1996.

63. Where mortgaged property in possession of the mortgagee has, during the continuance of the mortgage, received any accession, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, be entitled as against the mortgagee to such accession.

Where such accession has been acquired at the expense of the mortgagee, and is capable of separate possession or enjoyment without detriment to the principal property, the mortgagor desiring to take the accession must pay to the mortgagee the expense of acquiring it. If such separate possession or enjoyment is not possible, the accession must be delivered with the property, the mortgagor being liable, in the case of an acquisition necessary to preserve the property from destruction, forfeiture or sale, or made with his assent, to pay the proper cost thereof, as an addition to the principal money, at the same rate of interest.

In the case last mentioned the profits, if any, arising from the accession shall be credited to the mortgagor.

Where the mortgage is usufructuary and the accession has been acquired at the expense of the mortgagee, the profits, if any, arising from the accession shall, in the absence of a contract to the contrary, be set off against interest, if any, payable on the money so expended.

[63-A. (1) Where mortgaged property in possession of the mortgagee has during the continuance of the mortgage, been improved, the mortgagor upon redemption, shall in the absence of a contract to the contrary, be entitled to the improvement; and the mortgagor shall not, save only in cases provided for in sub-section (2), be liable to pay the cost thereof.

(2) Where any such improvement was effected at the cost of the mortgagee and was necessary to preserve the property from destruction or deterioration or was necessary to prevent the security from becoming insufficient, or was made in compliance with the lawful order of any public servant or public authority, the mortgagor shall, in the absence of a contract to the contrary, be liable to pay the proper cost thereof as an addition to the principal money with interest at the same rate as is payable on the principal, or, where no such rate is fixed, at the rate of nine per cent. per annum, and the profits, if any, accruing by reason of the improvement shall be credited to the mortgagor.]

¹Section 63-A added and in section 64 words "for a term of years" omitted vide Act VI of 1996 published in the Government Gazette dated 26th Sawan 1996.

64. Where the mortgaged property is a lease ¹[* *], and the mortgagee obtains a renewal of the lease, the mortgagor, upon redemption, shall, in the absence of a contract by him to the contrary, have the benefit of the new lease.

65. In the absence of a contract to the contrary, the mortgagor shall be deemed to contract with the mortgagee—

(a) that the interest which the mortgagor professes to transfer to the mortgagee subsists, and that the mortgagor has power to transfer the same;

(b) that the mortgagor will defend, or, if the mortgagee be in possession of the mortgaged property, enable him to defend, the mortgagor's title thereto;

(c) that the mortgagor will, so long as the mortgagee is not in possession of the mortgaged property, pay all public charges accruing due in respect of the property;

(d) and, where the mortgaged property is a lease ²[*], that the rent payable under the lease, the conditions contained therein, and the contracts binding on the lessee have been paid, performed and observed down to the commencement of the mortgage; and that the mortgagor will, so long as the security exists and the mortgagee is not in possession of the mortgaged property, pay the rent reserved by the lease, or, if the lease be renewed, the renewed lease, perform the conditions contained therein and observe the contracts binding on the lessee, and indemnify the mortgagee against all claims sustained by reason of the non-payment of the said rent or the non-performance or non-observance of the said conditions and contracts;

(e) and, where the mortgage is a second or subsequent incumbrance on the property, that the mortgagor will pay the interest from time to time accruing due on each prior incumbrance as and when it becomes due, and will at the proper time discharge the principal money due on such prior incumbrance.

³[* *].

The benefit of the contracts mentioned in this section shall be annexed to and shall go with the interest of the mortgagee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

¹See footnote under section 63-A.

²In section 65 clause (d) words "for a term of years" omitted and after clause (e) following words omitted "Nothing in clause (c) or in clause (d), so far as it relates to the payment of future rent, applies in the case of an usufructuary mortgage" vide Act VI of 1996 published in the Government Gazette date 26th Sawan 1996.

¹[**65-A.** (1) Subject to the provisions of sub-section (2), a mortgagor, while lawfully in possession of the mortgaged property, shall have power to make leases thereof which shall be binding on the mortgagee.

Mortgagor's power to lease.

(2) (a) Every such lease shall be such as would be made in the ordinary course of management of the property concerned, and in accordance with any local law, custom or usage.

(b) Every such lease shall reserve the best rent that can reasonably be obtained, and no premium shall be paid or promised and no rent shall be payable in advance.

(c) No such lease shall contain covenant for renewal.

(d) Every such lease shall take effect from a date not later than six months from the date on which it is made.

(e) In the case of a lease of buildings, whether leased with or without the land on which they stand, the duration of the lease shall in no case exceed three years, and the lease shall contain a covenant for payment of the rent and condition of re-entry on the rent not being paid within a time therein specified.

(3) The provisions of sub-section (1) apply only if and as far as a contrary intention is not expressed in the mortgage-deed; and the provisions of sub-section (2) may be varied or extended by the mortgage-deed and, as so varied and extended, shall, as far as may be, operate in like manner and with all like incidents, effects and consequences, as if such variations or extensions were contained in that sub-section.]

66. A mortgagor in possession of the mortgaged property is not liable to the mortgagee for allowing the property to deteriorate; but he must not commit any act which is destructive or permanently injurious thereto, if the security is insufficient or will be rendered insufficient by such act.

Waste by mortgagor in possession.

EXPLANATION.—A security is insufficient within the meaning of this section unless the value of the mortgaged property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the amount for the time being due on the mortgage.

Rights and Liabilities of Mortgagee.

67. In the absence of a contract to the contrary, the mortgagee has at any time after the mortgage-money has become ²[due] to him, and before a decree has been made for the

Right to foreclosure or sale.

¹Section 65-A added vide Act VI of 1996.

²In section 67, clause (a) substituted, "due" substituted for "payable" and "a decree" substituted for "an order" in three places vide Act VI of 1996 published in the Government Gazette dated 26th Sawan 1996.

redemption of the mortgaged property, or the mortgage-money has been paid or deposited as hereinafter provided, a right to obtain from the Court [a decree] that the mortgagor shall be absolutely debarred of his right to redeem the property, or [a decree] that the property be sold.

A suit to obtain [a decree] that a mortgagor shall be absolutely debarred of his right to redeem the mortgaged property is called a suit for foreclosure.

Nothing in this section shall be deemed—

[(a) to authorise any mortgagee, other than a mortgagee by conditional sale or a mortgagee under an anomalous mortgage by the term of which he is entitled to foreclose, to institute a suit for foreclosure, or an usufructuary mortgagee as such or a mortgagee by conditional sale as such to institute a suit for sale; or]

(b) to authorise a mortgagor who holds the mortgagee's rights as his trustee or legal representative, and who may sue for a sale of the property, to institute a suit for foreclosure; or

(c) to authorise the mortgagee of a railway, canal or other work in the maintenance of which the public are interested, to institute a suit for foreclosure or sale; or

(d) to authorise a person interested in part only of the mortgage-money to institute a suit relating only to a corresponding part of the mortgaged property, unless the mortgagees have, with the consent of the mortgagor, severed their interests under the mortgage.

¹[67-A. A mortgagee who holds two or more mortgages executed by the same mortgagor in respect of each of which he has a right to obtain in the same kind of decree under section 67, and who sues to obtain such decree on any one of the mortgages, shall, in the absence of a contract to the contrary, be bound to sue on all the mortgages in respect of which the mortgage-money has become due.]

¹[68. (1) The mortgagee has a right to sue for the mortgage-money in the following cases and no others, namely:—

(a) where the mortgagor binds himself to repay the same;
 (b) where, by any cause other than the wrongful act or default of the mortgagor or mortgagee, the mortgaged property is wholly or partially destroyed or the security is rendered insufficient within the meaning of section 66, and the mortgagee has given the mortgagor a reasonable opportunity of providing further security enough to render the whole security sufficient, and the mortgagor has failed to do so;

¹Section 67-A added and section 68 substituted *vide* Act VI of 1996 published in the Government Gazette dated 26th Sawan 1996.

(c) where the mortgagee is deprived of the whole or part of his security by or in consequence of the wrongful act or default of the mortgagor;

(d) where, the mortgagee being entitled to possession of the mortgaged property, the mortgagor fails to deliver the same to him, or to secure the possession thereof to him without disturbance by the mortgagor or any person claiming under a title superior to that of the mortgagor:

Provided that, in the case referred to in clause (a), a transferee from the mortgagor or from his legal representative shall not be liable to be sued for the mortgage-money.

(2) Where a suit is brought under clause (a) or clause (b) of sub-section (1), the Court may, at its discretion, stay the suit and all proceedings therein, notwithstanding any contract to the contrary, until the mortgagee has exhausted all his available remedies against the mortgaged property or what remains of it, unless the mortgagee abandons his security and, if necessary, re-transfers the mortgaged property].

69. Omitted.

70. If, after the date of a mortgage, any accession is made to the mortgaged property, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to such accession.

Accession to mortgaged property.

Illustrations.

(a) A mortgages to B a certain field bordering on a river. The field is increased by alluvion. For the purposes of his security, B is entitled to the increase.

(b) A mortgages a certain plot of building land to B and afterwards erects a house on the plot. For the purposes of his security, B is entitled to the house as well as the plot.

71. When the mortgaged property is a lease [* *] and the mortgagor obtains a renewal of the lease, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to the new lease.

Renewal of mortgaged lease.

72. [A mortgagee] may spend such money as is necessary—

Rights of mortgagee in possession.

(a) Omitted.

(b) for [the preservation of the mortgaged property]

¹In section 71 "words for a term of year" omitted *vide* Act VI of 1996.

²In section 72 "A mortgagee" substituted for the words "When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property, he"; clause (a) omitted; in clause (b) words in brackets substituted for "its preservation"; proviso added and words in brackets after the proviso substituted for the words "a charge on the mortgaged property, in addition to the principal money, with the same priority and with interest at the same rate" *vide* Act VI of 1996 published in the Government Gazette dated 26th Sawan 1996.

from destruction, forfeiture or sale;

(c) for supporting the mortgagor's title to the property;

(d) for making his own title thereto good against the mortgagor; and

(e) when the mortgaged property is a renewable leasehold, for the renewal of the lease;

and may, in the absence of a contract to the contrary, add such money to the principal money, at the rate of interest payable on the principal, and where no such rate is fixed, at the rate of nine per cent. per annum.

[Provided that the expenditure of money by the mortgagee under clause (b) or clause (c) shall not be deemed to be necessary unless the mortgagor has been called upon and has failed to take proper and timely steps to preserve the property or to support the title.]

Where the property is by its nature insurable, the mortgagee may also, in the absence of a contract to the contrary, insure and keep insured against loss or damage by fire the whole or any part of such property; and the premiums paid for any such insurance shall be [added to the principal money with interest at the same rate as is payable on the principal money or, where no such rate is fixed, at the rate of nine per cent. per annum.] But the amount of such insurance shall not exceed the amount specified in this behalf in the mortgage-deed or (if no such amount is therein specified) two-thirds of the amount that would be required in case of total destruction to reinstate the property insured.

Nothing in this section shall be deemed to authorise the mortgagee to insure when an insurance of the property is kept up by or on behalf of the mortgagor to the amount in which the mortgagee is hereby authorised to insure.

¹[73. (1) Where the mortgaged property or any part thereof or any interest therein is sold owing to failure to pay arrears of revenue or other charges of a public nature or rent due in respect of such property, and such failure did not arise from any default of the mortgagee, the mortgagee shall be entitled to claim payment of the mortgage-money in whole or in part, out of any surplus of the sale proceeds remaining after payment of the arrears and of all charges and deductions directed by law.

(2) Where the mortgaged property or any part thereof or any interest therein is acquired under the Land Acquisition Act or any other enactment for the time being in

¹Section 73 substituted and sections 74 and 75 omitted *vide* Act VI of 1996 published in the Government Gazette dated 26th Sawan 1996.

force providing for the compulsory acquisition of immovable property, the mortgagee shall be entitled to claim payment of the mortgage-money in whole or in part out of the amount due to the mortgagor as compensation.

(3) Such claims shall prevail against all other claims except those of prior encumbrancers, and may be enforced notwithstanding that the principal money on the mortgage has not become due.]

¹74. Omitted.

¹75. Omitted.

76. When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property:—

Liabilities of mortgagee in possession.

(a) he must manage the property as a person of ordinary prudence would manage it if it were his own;

(b) he must use his best endeavours to collect the rents and profits thereof;

(c) he must, in the absence of a contract to the contrary, out of the income of the property, pay the Government revenue all other charges of a public nature ²[and all rent] accruing due in respect thereof during such possession and any arrears of rent in default of payment of which the property may be summarily sold;

(d) he must, in the absence of a contract to the contrary, make such necessary repairs of the property as he can pay for out of the rents and profits thereof after deducting from such rents and profits the payments mentioned in clause (c) and the interest on the principal money;

(e) he must not commit any act which is destructive or permanently injurious to the property;

(f) where he has insured the whole or any part of the property against loss or damage by fire, he must, in case of such loss or damage, apply any money which he actually receives under the policy or so much thereof as may be necessary, in reinstating the property, or, if the mortgagor so directs, in reduction or discharge of the mortgage-money;

(g) he must keep clear, full and accurate accounts of all sums received and spent by him as mortgagee, and, at any time during the continuance of the mortgage, give the mortgagor, at his request and cost, true copies of such accounts and of the vouchers by which they are supported;

(h) his receipts from the mortgaged property, or, where such property is personally occupied by him, a fair occupation-rent in respect thereof, shall, after deducting the expenses

¹See footnote under section 73.

²Words in brackets in clause (c) inserted *vide* Act VI of 1996 published in the Government Gazette dated 26th Sawan 1996.

¹[properly incurred for the management of the property and the collection of rents and profits and the other expenses] mentioned in clauses (c) and (d), and interest thereon, be debited against him in reduction of the amount (if any) from time to time due to him on account of interest ²[* * *] and, so far as such receipts exceed any interest due, in reduction or discharge of the mortgage-money; the surplus, if any, shall be paid to the mortgagor;

(i) when the mortgagor tenders, or deposits in manner hereinafter provided, the amount for the time being due on the mortgage, the mortgagee must, notwithstanding the provisions in the other clauses of this section, account for his ²[* * *] receipts for the mortgaged property from the date of the tender or from the earliest time when he could take such amount out of Court, as the case may be ²[and shall not be entitled to deduct any amount therefrom on account of any expenses incurred after such date or time in connection with the mortgaged property.]

If the mortgagee fail to performe any of the duties imposed upon him by this section, he may, ^{occassioned by} when accounts are taken in pursuance of ^{his default} a decree made under this chapter, be debited with the loss, if any, occasioned by such failure.

77. Nothing in section 76, clauses (b), (d), (g), and (h), applies to cases where there is a contract between the mortgagee and the mortgagor that the receipts from the mortgaged property shall, so long as the mortgagee is in possession of the property, be taken in lieu of interest on the principal money, or in lieu of such interest and defined portions of the principal.

Priority.

78. Where, through the fraud, misrepresentation or gross neglect of a prior mortgagee, another person has been induced to advance money on the security of the mortgaged property the prior mortgagee shall be postponed to the subsequent mortgagee

79. If a mortgage made to secure future advances, the performance of an engagement or the balance of a running account, expresses the maximum to be secured thereby, a subsequent mortgage of the same property shall, if made with

¹In clause (h) words in brackets are inserted, and words "on the mortgage-money" are deleted *vide* Act VI of 1996 published in the Government Gazette dated 26th Sawan 1996.

²In clause (i) word "gross" omitted and words in brackets added *vide* Act VI of 1996 published in the Government Gazette dated 26th Sawan 1996.

notice of the prior mortgage, be postponed to the prior mortgage in respect of all advances or debits not exceeding the maximum though made or allowed with notice of the subsequent mortgage.

Illustration.

A mortgages Sultanpur to his bankers, B & Co., to secure the balance of his account with them to the extent of Rs 10,000. A then mortgages Sultanpur to C, to secure Rs 1,000, C having notice of the mortgage to B & Co., and C gives notice to B & Co., of the second mortgage. At the date of the second mortgage, the balance due to B & Co., does not exceed Rs. 5,000. B & Co., subsequently advance to A sums making the balance of the account against him exceed the sum of Rs. 10,000 B & Co. are entitled to the extent of Rs. 10,000 to priority over C.

¹80. Omitted.

Marshalling and Contribution.

²[81. If the owner of two or more properties mortgages them to one person and then mortgages one or more of the properties to another person, the subsequent mortgagee is, in the absence of a contract to the contrary, entitled to have the prior mortgage-debt satisfied out of the property or properties not mortgaged to him, so far as the same will extend, but not so as to prejudice the rights of the prior mortgagee or of any other person who has for consideration acquired an interest in any of the properties.]

³82. [Where property subject to a mortgage belongs to two or more persons having distinct and separate rights of ownership therein the different shares in or parts of such property owned by such persons are, in the absence of a contract to the contrary, liable to contribute rateably to the debt secured by the mortgage, and, for the purpose of determining the rate at which each such share or part shall contribute, the value thereof shall be deemed to be its value at the date of the mortgage after deduction of the amount of any other mortgage or charge to which it may have been subject on the date.]

Where, of two properties belonging to the same owner, one is mortgaged to secure one debt and then both are mortgaged to secure another debt, and the former debt is paid out of the former property, each property is, in the absence

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¹Section 80 omitted *vide* Act VI of 1996 published in the Government Gazette dated 26th Sawan 1996.

²Section 81 substituted *vide* Act VI of 1996 published in the Government Gazette dated 26th Sawan 1996.

³Section 82 paragraph within brackets substituted and in third paragraph word "subsequent" substituted for "second" *vide* Act VI of 1996 published in the Government Gazette dated 26th Sawan 1996.

of a contract to the contrary, liable to contribute rateably to the latter debt after deducting the amount of the former debt from the value of the property out of which it has been paid.

Nothing in this section applies to a property liable under section 81 to the claim of the [subsequent] mortgagee.

Deposit in Court.

83. At any time after the principal money ¹[payable in respect of any mortgage has become due] and before a suit for redemption of the mortgaged property is barred, the mortgagor, or any other person entitled to institute such suit, may deposit, in any Court in which he might have instituted such suit to the account of the mortgagee, the amount remaining due on the mortgage.

Power to deposit in Court money due on mortgage.

The Court shall thereupon cause written notice of the deposit to be served on the mortgagee, and the mortgagee may, on presenting a petition (verified in manner prescribed by law for the verification of complaints) stating the amount then due on the mortgage, and his willingness to accept the money so deposited in full discharge of such amount, and on depositing in the same Court the mortgage-deed ²[and all documents in his possession or power relating to the mortgaged property], apply for and receive the money, and the mortgage-deed ³[and all such other documents] so deposited shall be delivered to the mortgagor or such other person as aforesaid.

Right to money deposited by mortgagor.

‘[Where the mortgagee is in possession of the mortgaged property, the Court shall, before paying to him the amount so deposited, direct him to deliver possession thereof to the mortgagor and at the cost of the mortgagor either to re-transfer the mortgaged property to the mortgagor or to such third person as the mortgagor may direct or to execute and (where the mortgage has been effected by a registered instrument) have registered an acknowledgment in writing than any right in derogation of the mortgagor’s interest transferred to the mortgagee has been extinguished.]

84. When the mortgagor or such other person as aforesaid has tendered or deposited in court under section 83 the amount remaining due on the mortgage, interest on the princi-

Cessation of interest

¹Words in brackets substituted for “has become payable” vide Act VI of 1996.

²Words in brackets substituted for words “if then in his possession or power” vide Act VI of 1996, published in the Government Gazette, dated 26th Sawan 1996.

³Words in brackets inserted vide Act VI of 1996.

⁴Words in brackets added vide Act VI of 1996.

pal money shall cease from the date of the tender or ¹[in the case of a deposit, where no previous tender of such amount has been made] as soon as the mortgagor or such other person as aforesaid has done all that has to be done by him to enable the mortgagee to take such amount out of Court, ²[and the notice required by section 83 has been served on the mortgagee:

Provided that, where the mortgagor has deposited such amount without having made a previous tender thereof and has subsequently withdrawn the same or any part thereof, interest on the principal money shall be payable from the date of such withdrawal.]

Nothing in this section or in section 83 shall be deemed to deprive the mortgagee of his right to interest when there exists a contract that he shall be entitled to reasonable notice before payment or tender of the mortgage-money ³[and such notice has not been given before the making of the tender or deposit, as the case may be.]

85 to 90. Omitted.

Redemption.

[91. Besides the mortgagor, any of the following
Persons who may sue for redemption. persons may redeem, or institute a suit for redemption of, the mortgaged property, namely:—

(a) any person (other than the mortgagee of the interest sought to be redeemed) who has any interest in, or charge upon, the property mortgaged or in or upon the right to redeem the same;

(b) any surety for the payment of the mortgage-debt or any part thereof; or

(c) any creditor of the mortgagor who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property.]

⁴**[92.** Any of the persons referred to in section 91 (other than the mortgagor) and any co-mortgagor
Subrogation. shall, on redeeming property subject to the mortgage, have, so far as regards redemption, foreclosure or sale of such property, the same rights as the mortgagee whose mortgage he redeems may have against the mortgagor or any other mortgagee.

¹Words in brackets inserted *vide* Act VI of 1996 published in the Government Gazette dated 26th Sawan 1996.

²Words in brackets substituted for the words "as the case may be" *vide* Act VI of 1996 published in the Government Gazette dated 26th Sawan 1996.

³Words in brackets added *vide* Act VI of 1996 published in the Government Gazette dated 26th Sawan 1996.

⁴Section 91 substituted *ibid.*

⁵Sections 92, 93 and 94 inserted and section 95 substituted *vide* Act VI of 1996.

The right conferred by this section is called the right of subrogation, and a person acquiring the same is said to be subrogated to the rights of the mortgagee whose mortgage he redeems.

A person who has advanced to a mortgagor money with which the mortgage has been redeemed shall be subrogated to the rights of the mortgagee whose mortgage has been redeemed, if the mortgagor has by a registered instrument agreed that such persons shall be so subrogated.

Nothing in this section shall be deemed to confer a right of subrogation on any person unless the mortgage in respect of which the right is claimed has been redeemed in full.]

¹[93. No mortgagee paying off a prior mortgage, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his original security; and, except in the case provided for by section 79, no mortgagee making a subsequent advance to the mortgagor, whether with or without notice of an intermediate mortgagor, shall thereby acquire any priority in respect of his security for such subsequent advance.]

¹[94. Where a property is mortgaged for successive debts to successive mortgagees, a mesne mortgagee has the same rights against mortgagees posterior to himself as he has against the mortgagor.]

¹[95. Where one of the several mortgagors redeemed the mortgaged property, he shall, in enforcing his right of subrogation under section 92 against his co-mortgagors be entitled to add to the mortgage-money recoverable from them such proportion of the expenses properly incurred in such redemption as is attributable to their share in the property.]

96 and 97. Omitted.

Anomalous Mortgages.

²98. In the case of [an anomalous mortgage], the rights and liabilities of the parties shall be determined by their contract as evidenced in the mortgage-deed, and, so far as such contract does not extend, by local usage.

99. Omitted.

¹ See footnote under section 92.

² In section 98 words in brackets substituted for the words "a mortgage not being a simple mortgage, a mortgage by conditional sale, an usufructuary mortgage or a combination of the first and third, or the second and third of such forms" vide Act VI of 1996 published in the Government Gazette dated 26th Sawan 1996.

Charges.

100. Where immovable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions hereinbefore contained ¹[which apply to a simple mortgage shall, so far as may be, apply to such charge.]

Nothing in this section applies to the charge of a trustee on the trust property for expenses properly incurred in the execution of his trust ²[and, save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge.]

³[**101.** Any mortgage of, or person having a charge upon, immovable property, or any transferee from such mortgagee or charge-holder, may purchase or otherwise acquire the rights in the property of the mortgagor or owner, as the case may be, without thereby causing the mortgage or charge to be merged as between himself and any subsequent mortgagee of, or person having a subsequent charge upon, the same property; and no such subsequent mortgagee or charge-holder shall be entitled to foreclose or sell such property without redeeming the prior mortgage or charge, or otherwise than subject thereto.]

No merger in case of subsequent encumbrance.

Notice and Tender.

102. Where the person on or to whom any notice or tender is to be served or made under this chapter does not reside in the district in which the mortgaged property or some part thereof is situate, service or tender on or to an agent holding a general power of attorney from such person or otherwise duly authorised to accept such service or tender shall be deemed sufficient.

Service or tender on or to agent.

⁴[Where no person or agent on whom such notice should

¹In section 100 words in 1st brackets substituted for the words "as to a mortgagor shall, so far as may be, apply to the owner of such property, and the provisions of section 81 and 82 shall, so far as may, apply to the persons having such charge".

²Words in 2nd brackets added *vide* Act VI of 1996.

³Section 101 substituted *vide* Act VI of 1996.

⁴In section 102 words in 1st brackets substituted for the words "when the person or agent on whom such notice should be served cannot be found in the said district or is unknown".

be served can be found or is known], to the person required to serve the notice, the latter person may apply to any Court in which a suit might be brought for redemption of the mortgaged property, and such Court shall direct in what manner such notice shall be served, and any notice served in compliance with such direction shall be deemed sufficient.

¹[Provided that, in the case of a notice required by section 83, in the case of deposit, the application shall be made to the Court in which the deposit has been made.]

²[Where no person or agent to whom such tender should be made can be found or is known] to the person desiring to make the tender, the latter person may deposit ³[in any Court in which a suit might be brought for redemption of the mortgaged property] the amount sought to be tendered, and such deposit shall have the effect of a tender of such amount.

103. Where, under the provisions of this chapter, a notice is to be served on or by, or a tender or deposit made or accepted or taken out of Court by, any person incompetent to contract, such notice may be served, [on or by] or tender or deposit made, accepted or taken, by the legal curator of the property of such person; but where there is no such curator, and it is requisite or desirable in the interests of such person that a notice should be served or a tender or deposit made under the provisions of this chapter, application may be made to any Court in which a suit might be brought for the redemption of the mortgage to appoint a guardian *ad litem* for the purposes of serving or receiving service of such notice, or making or accepting such tender, or making or taking out of Court such deposit, and for the performance of all consequential acts which could or ought to be done by such person if he were competent to contract; and the provisions of Order XXXII of the Code of Civil Procedure shall, so far as may be, apply to such application and to the parties thereto and to the guardian appointed thereunder.

104. The High Court may, from time to time, make rules consistent with this Act for carrying out, in itself and in the Courts of Civil Judicature subject to its superintendence, the provisions contained in this chapter.

¹Words in 2nd brackets added as proviso ;

²Words in 3rd brackets substituted for the words "where the person or agent to whom such tender should be made cannot be found within the said district, or is unknown".

³Words in 4th brackets substituted for the words "in such court as last aforesaid" *vide* Act VI of 1996 published in the Government Gazette dated 26th Sawan 1996.

⁴In section 103 words "on or by" inserted *vide* Act VI of 1996 published in the Government Gazette dated 26th Sawan 1996.

CHAPTER V.

OF LEASES OF IMMOVABLE PROPERTY.

105. A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

Lease defined.

Lessor, lessee, premium and rent defined.

106. In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice expiring with the end of a year of the tenancy; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice expiring with the end of a month of the tenancy.

Duration of certain leases in absence of written contract or local usage.

Every notice under this section must be in writing signed by or on behalf of the person giving it, and ¹[either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party] or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.

107. A lease of immovable property for any term exceeding one year, and reserving a yearly rent, exceeding rupees fifty can be made only by a registered instrument. ✓

Leases how made.²

All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.

Provided that ²[Government] may, from time to time, by notification in the Jammu and Kashmir Government Gazette,

¹In section 106 words in brackets substituted for the words "tendered or delivered either personally to the party who is intended to be bound by it" *vide* Act VI of 1996 published in the Government Gazette dated 26th Sawan 1996.

²In section 107 "Government" substituted "for His Highness" *vide* Act VI of 1996.

direct that leases of immovable property, other than leases for any term exceeding one year, and reserving a yearly rent, exceeding rupees fifty or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession.

108. In the absence of a contract or local usage to the contrary, the lessor and lessee of immovable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased:—

Rights and liabilities of lessor and lessee.

(A) Rights and Liabilities of the Lessor.

(a) The lessor is bound to disclose to the lessee any material defect in the property, with reference to its intended use, of which the former is and the latter is not aware, and which the latter could not with ordinary care discover:

(b) the lessor is bound on the lessee's request to put him in possession of the property:

(c) the lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease without interruption.

The benefit of such contract shall be annexed to and go with the lessee's interest as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

(B) Rights and Liabilities of the Lessee.

(d) If during the continuance of the lease any accession is made to the property, such accession (subject to the law relating to alluvion for the time being in force) shall be deemed to be comprised in the lease:

(e) if by fire, tempest or flood, or violence of an army or of a mob or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void:

Provided that, if the injury be occasioned by the wrongful act or default of the lessee, he shall not be entitled to avail himself of the benefit of this provision:

(f) if the lessor neglects to make, within a reasonable time after notice, any repairs which he is bound to make, to the property, the lessee may make the same himself, and deduct the expense of such repairs with interest from the rent, or

otherwise recover it from the lessor:

(g) if the lessor neglects to make any payment which he is bound to make, and which if not made by him, is recoverable from the lessee or against the property, the lessee may make such payment himself, and deduct it with interest from the rent, or otherwise recover it from the lessor:

(h) the lessee may '[even after the deterioration of of the lease] remove, at any time '[whilst he is in possession of the property leased but not afterwards], all things which he has attached to the earth: provided he leaves the property in the state in which he received it:

(i) when a lease of uncertain duration determines by any means except the fault of the lessee, he or his legal representative is entitled to all the crops planted or sown by the lessee and growing upon the property when the lease determines, and to free ingress and egress to gather and carry them:

(j) the lessee may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property, and any transferee of such interest or party may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease:

nothing in this clause shall be deemed to authorise a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee:

(k) the lessee is bound to disclose to the lessor any fact as to the nature or extent of the interest which the lessee is about to take, or which the lessee is, and the lessor is not, aware, and which materially increases the value of such interest:

(l) the lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf:

(m) the lessee is bound to keep, and on the termination of the lease to restore, the property in as good condition as it was in at the time when he was put in possession, subject only to the changes caused by reasonable wear and tear or irresistible force, and to allow the lessor and his agents, at all reasonable times during the term, to enter upon the property and inspect the condition thereof and give or leave notice of any

¹ Words inserted *v de* Act VI of 1996.

² Words substituted for the words "during the continuance of the lease" *vide* Act VI of 1996 published in the Government Gazette dated 26th Sawan 1996.

defect in such condition; and, when such defect has been caused by any act or default on the part of the lessee, his servants or agents, he is bound to make it good within three months after such notice has been given or left:

(n) if the lessee becomes aware of any proceeding to recover the property or any part thereof, or of any encroachment made upon, or any interference with, the lessor's rights concerning such property, he is bound to give, with reasonable diligence, notice thereof to the lessor:

¹(o) the lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell [or sell] timber, pull down or damage buildings, [belonging to the lessor or] work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto:

(p) he must not, without the lessor's consent, erect on the property any permanent structure, except for agricultural purposes:

(q) on the determination of the lease, the lessee is bound to put the lessor into possession of the property.

109. If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights, and, if the lessee so elects, be subject to all the liabilities, of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not, by reason only of such transfer, cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him:

Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.

The lessor, the transferee and the lessee may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and, in case they disagree, such determination may be made by any Court having jurisdiction to entertain a suit for the possession of the property leased.

¹In clause (o) words in brackets inserted *vide* Act VI of 1996 published in the Government Gazette dated 26th Sawan 1996

110. Where the time limited by a lease of immovable property is expressed as commencing from a particular day, in computing that time such day shall be excluded. Where no day, of commencement is named, the time so limited begins from the making of the lease.

Exclusion of day on which term commences.

Where the time so limited is a year or a number of years, in the absence of an express agreement to the contrary, the lease shall last during the whole anniversary of the day from which such time commences.

Duration of lease for a year.

Where the time so limited is expressed to be terminable before its expiration, and the lease omits to mention at whose option it is so terminable, the lessee, and not the lessor, shall have such option.

Option to determine lease.

111. A lease of immovable property determines—

Determination of lease.

(a) by efflux of the time limited thereby:

(b) where such time is limited conditionally on the happening of some event—by the happening of such event:

(c) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event—by the happening of such event:

(d) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right:

(e) by express surrender; that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them:

(f) by implied surrender:

(g) by forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that on breach thereof the lessor may re-enter ¹[* *] or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself ²[or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event;] and in ³[any of these cases] the lessor or his transferee ⁴[gives notice in writing to the lessee of] his intention to determine the lease:

(h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly

¹Words "or the lease shall become void" omitted;

²Words inserted;

³Words substituted for the words "either case";

⁴Words substituted for the words "does some act showing";

given by one party to the other.

Illustration to clause (f.)

A lessee accepts from his lessor a new lease of the property leased to take effect during the continuance of the existing lease. This is an implied surrender of the former lease, and such lease determines thereupon.

112. A forfeiture under section III, clause (g), is waived by acceptance of rent which has become due since the forfeiture, or by distress for such rent, or by any other act on the part of the lessor, showing an intention to treat the lease as subsisting:

Provided that the lessor is aware that the forfeiture has been incurred:

Provided also that, where rent is accepted after the institution of a suit to eject the lessee on the ground of forfeiture, such acceptance is not a waiver.

113. A notice given under section III, clause (h), is waived, with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it showing an intention to treat the lease as subsisting.

Illustrations.

(a) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires. B tenders, and A accepts, rent which has become due in respect of the property since the expiration of the notice. The notice is waived.

(b) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires, and B remains in possession. A gives to B as lessee a second notice to quit. The first notice is waived.

114. Where a lease of immovable property has determined by forfeiture for non-payment of rent, and the lessor sues to eject the lessee, if, at the hearing of the suit, the lessee pays or tenders to the lessor the rent in arrear, together with interest thereon and his full costs of the suit, or gives such security as the Court thinks sufficient for making such payment within fifteen days, the Court may, in lieu of making a decree for ejectment, pass an order relieving the lessee against the forfeiture; and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred.

[114-A.] Where a lease of immovable property has determined by forfeiture for a breach of an express condition which provides that on breach thereof the lessor may re-enter, no suit for ejectment shall lie unless and until the lessor has served

on the lessee a notice in writing—

(a) specifying the particular breach complained of; and

(b) if the breach is capable of remedy, requiring the lessee to remedy the breach; and the lessee fails within a reasonable time from the date of the service of the notice, to remedy the breach, if it is capable of remedy.

Nothing in this section shall apply to an express condition against the assigning, under-letting, parting with the possession, or disposing, of the property leased, or to an express condition relating to forfeiture in case of non-payment of rent.]

115. The surrender, express or implied, of a lease of immovable property does not prejudice an under-lease of the property or any part thereof previously granted by the lessee, on terms and conditions substantially the same (except as regards the amount of rent) as those of the original lease; but, unless the surrender is made for the purpose of obtaining a new lease, the rent payable by, and the contracts binding on, the under-lessee shall be respectively payable to and enforceable by the lessor.

The forfeiture of such a lease annuls all such under-leases, except where such forfeiture has been procured by the lessor in fraud of the under-lessees, or relief against the forfeiture is granted under section 114.

116. If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in section 106.

Illustrations.

(a) A lets a house to B for five years. B underlets the house to C at a monthly rent of Rs. 100. The five years expire, but C continues in possession of the house and pays the rent to A. C's lease is renewed from month to month.

(b) A lets a farm to B for the life of C. C dies, but B continues in possession with A's assent. B's lease is renewed from year to year.

117. None of the provisions of this chapter apply to leases for agricultural purposes, except in so far as '[Government] may by notification published in the Jammu and Kashmir Government Gazette declare all

¹In section 117 "Government" substituted for "His Highness" vide Act VI of 1996 published in the Government Gazette dated 26th Sawan 1996.

or any of such provisions to be so applicable in the case of all or any of such leases, together with, or subject to, those of the local law, if any, for the time being in force.

Such notification shall not take effect until the expiry of six months from the date of its publication.

CHAPTER VI.

OF EXCHANGES.

118. When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing nor both things being money only, the transaction is called an "exchange."

A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale.

¹[**119.** If any party to an exchange or any person claiming through or under such party is by reason of any defect in the title of the other party deprived of the thing or any part of the thing received by him in exchange, then, unless a contrary intention appears from the terms of the exchange, such other party is liable to him or any person claiming through or under him for loss caused thereby or at the option of the person so deprived, for the return of the thing transferred if still in the possession of such other party or his legal representative or a transferee from him without consideration.]

120. Save as otherwise provided in this chapter, each party has the rights and is subject to the liabilities of a seller as to that which he gives, and has the rights and is subject to the liabilities of a buyer as to that which he takes.

121. On an exchange of money, each party thereby warrants the genuineness of the money given by him.

CHAPTER VII.

OF GIFTS.

122. "Gift" is the transfer of certain existing movable or immovable property made vountarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

"Gift" defined.
Such acceptance must be made during the life time of the donor and while he is still capable of giving.

If the donee dies before acceptance, the gift is void.

123. For the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

Transfer how effected.
For the purpose of making a gift of movable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.

Gift of existing and future property.
Such delivery may be made in the same way as goods sold may be delivered.

EXPLANATION.—The word attest has the same meaning in this section as in section 59.

124. A gift comprising both existing and future property is void as to the latter.

125. A gift of a thing to two or more donees, of whom one does not accept it, is void as to the interest which he would have taken had he accepted.

Gift to several, of whom one does not accept.
126. The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be.

When gift may be suspended or revoked.
A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded.

Save as aforesaid, a gift cannot be revoked.

Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.

Illustrations.

(a) A gives a field to B, reserving to himself, with B's assent, the right to take back the field in case B and his descendants die before A. B dies with-

out descendants in A's life-time. A may take back the field.

(b) A gives a lakh of rupees to B, reserving to himself, with B's assent, the right to take back at pleasure Rs. 10 000 out of the lakh. The gift holds good as to Rs. 90,000, but is void as to Rs. 10,000, which continue to belong to A.

127. Where a gift is in the form of a single transfer to the same person of several things of which one is, and the others are not, burdened by an obligation, the donee can take nothing by the gift unless he accepts it fully.

Onerous gifts.

Where a gift is in the form of two or more separate and independent transfers to the same person of several things, the donee is at liberty to accept one of them and refuse the others, although the former may be beneficial and the latter onerous.

A donee not competent to contract and accepting property burdened by any obligation is not bound by his acceptance. But if, after becoming competent to contract and being aware of the obligation, he retains the property given, he becomes so bound.

Onerous gift to disqualified person.

Illustrations.

(a) A has shares in X, a prosperous joint stock company, and also shares in Y, a joint stock company in difficulties. Heavy calls are expected in respect of the shares in Y. A gives B all his shares in joint stock companies. B refuses to accept the shares in Y. He cannot take the shares in X.

(b) A having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is more than the house can be let for, gives to B the lease, and also, as a separate and independent transaction, a sum of money. B refuses to accept the lease. He does not by this refusal forfeit the money.

128. Subject to the provisions of section 127, where a gift consists of the donor's whole property, the donee is personally liable for all the debts due by [and liabilities of] the donor at the time of the gift to the extent of the property comprised therein.

Universal donee.

129. Nothing in this chapter relates to gifts of movable property made in contemplation of death, or shall be deemed to affect save as provided by section 123 any rule of Hindu, Mohammadan or Buddhist law.

Saving of donations mortis causa and Mohammadan law.

CHAPTER VIII.

OF TRANSFERS OF ACTIONABLE CLAIMS.

130. (1) The transfer of an actionable claim [whether with or without consideration] shall be effected only by the execution of an instrument in writing signed by the transferor or his duly authorised agent, and shall be complete and effectual upon the execution of such instrument, and thereupon all the rights and remedies of the transferor, whether by way of damages or otherwise, shall vest in the transferee, whether such notice of the transfer as is hereinafter provided be given or not :

Transfer of actionable claims.

Provided that every dealing with the debt or other actionable claim by the debtor or other person from or against whom the transferor would, but for such instrument of transfer as aforesaid, have been entitled to recover or enforce such debt or other actionable claim, shall (save where the debtor or other person is a party to the transfer or has received express notice thereof as hereinafter provided) be valid as against such transfer.

(2) The transferee of an actionable claim may, upon the execution of such instrument of transfer as aforesaid, sue or institute proceedings for the same in his own name without obtaining the transferor's consent to such suit or proceedings and without making him a party thereto.

EXCEPTION.—Nothing in this section applies to the transfer of a marine or fire policy of insurance.

Illustrations.

(i) A owes money to B, who transfers the debt to C. B then demands the debt from A, who, not having received notice of the transfer, as prescribed in section 131, pays B. The payment is valid, and C cannot sue A for the debt.

(ii) A effects a policy on his own life with an Insurance Company and assigns it to a Bank for securing the payment of an existing or future debt. If A dies, the Bank is entitled to receive the amount of the policy and to sue on it without the concurrence of A's executor, subject to proviso in subsection (1) of section 130 and to the provisions of section 132.

131. Every notice of transfer of an actionable claim shall be in writing, signed by the transferor or his agent duly authorised in this behalf, or, in case the transferor refuses to sign, by the transferee or his agent, and shall state the name and address of the transferee.

Notice to be in writing, signed.

132. The transferee of an actionable claim shall take it subject to all the liabilities and equities to which the transferor was subject in respect thereof at the date of the transfer.

Liability of transferee of actionable claim.

Illustrations.

(i) A transfers to C a debt due to him by B, A being then indebted to B. C sues B for the debt due by B to A. In such suit B is entitled to set off the debt due by A to him, although C was unaware of it at the date of such transfer.

(ii) A executed a bond in favour of B under circumstances entitling the former to have it delivered up and cancelled. B assigns the bond to C for value and without notice of such circumstances. C cannot enforce the bond against A.

133. Where the transferor of a debt warrants the solvency of the debtor, the warranty, in the absence of a contract to the contrary, applies only to his solvency at the time of the transfer, and is limited, where the transfer is made for consideration, to the amount or value of such consideration.

134. Where a debt is transferred for the purpose of securing an existing or future debt, the debt so transferred if received by the transferor or recovered by the transferee, is applicable, first, in payment of the costs of such recovery: secondly in or towards satisfaction of the amount for the time being secured by the transfer, and the residue, if any, belongs to the transferor or other person entitled to receive the same.

135. Every assignee, by endorsement or other writing, of a policy of marine insurance or of a policy of insurance against fire, in whom the property in the subject insured shall be absolutely vested at the date of the assignment, shall have transferred and vested in him all rights of suit as if the contract contained in the policy had been made with himself.

136. No Judge, legal practitioner, or officer connected with any Court of Justice shall buy or traffic in, or stipulate for, or agree to receive, any share of, or interest in, any actionable claim, and no Court of Justice shall enforce, at his instance, or at the instance of any person claiming by or through him, any actionable claim so dealt with by him as aforesaid.

Incapacity of officers connected with Courts of Justice.

137. Nothing in the foregoing sections of this chapter applies to stocks, shares, or debentures, or to instruments which are for the time being, by law or custom, negotiable, or to any

Saving of negotiable instruments, etc.

mercantile document of title to goods.

EXPLANATION.—The expression “mercantile document of title to goods” includes a bill of lading, dock-warrant, warehouse-keeper’s certificate, railway receipt, warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented.

138. (1) No transfer of immovable property, except in case governed by any special law to the contrary, shall be valid unless and until it is in writing registered and ‘[the registration thereof has been completed in accordance with sub-section (3) of section 61 of the Registration Act 1977].’

(2) No Court shall entertain a suit for pre-emption in respect of transfer of any such immovable property unless the transfer complies with the provision of sub-section (1).

(3) No person shall take possession of, or commence to build or build on, any land in the Province of Kashmir which has been transferred or has been contracted to be transferred to him unless and until such transfer becomes valid under the provisions of sub-section (1).

(4) No person who has obtained a transfer of immovable property referred to in sub-section (1) shall apply for and obtain from any Revenue or Settlement Officer or Court any alteration in any existing entry in any Settlement Record and paper, unless such person produces before such officer or Court a duly executed registered instrument ‘[the registration whereof has been completed in the manner specified in sub-section (1)].’

And no such officer or Court shall alter or cause to be altered any such entry except upon the production of an instrument registered ‘[in the aforesaid manner]:’

Provided that nothing in this section applies to a lease of agricultural land for one year or to a lease of any other land for a period not exceeding seven years.

Provided also that nothing in sub-sections (3) and (4) shall be deemed to apply to transfers by will or by any rule of intestate succession or by the operation of the law of survivorship.

139. (1) Nothing in this Act shall affect a Regulation, *Hidayat*, Resolution, *Ailan*, Rule or valid custom now in force restricting and regulating transfers of immovable property in any part of the Jammu and Kashmir State of any right therein, or confer any right, or rights of transfer ex-

[Words in brackets in section 138 substituted by Notification No. 2-L/83 published in the Government Gazette dated 5th Jeth 1983 (Ext). These amendments were to take effect from 20th Assuj, 1982 (5th October 1925).

pressly taken away or restricted by any such enactment.

(2) In particular and without prejudice to the generality of the provisions of sub-section (1) the restrictions and rules contained in the following shall be observed:—

- (i) No. 104 of 1893.
- (ii) State Council Resolution No. 17 of 22nd June 1895.
- (iii) State Council Resolution No. 9 of 12th October 1895.
- (iv) State Council Resolution No. 52 of 19th October 1897.
- (v) Ailan No. 18 of 3rd Poh 1964;
- (vi) Hidayat under section 73 regarding alienation sanctioned by His Highness and conveyed under Chief Minister's letter No. 2301, of 21st July 1916.
- (vii) Hidayat No. 185/298 of 24th Magh 1973;
- (viii) State Council Resolution No. 37 of 24th August 1896;
- (ix) Ailan No. 9 of 13th Assuj 1963;
- (x) Ailan No. 4 of 18th Baisakh 1975;
- (xi) State Council Resolution No. 2 of 29th October 1903;
- (xii) State Council Resolution No. 18 of 21st August 1905;
- (xiii) State Council Resolution No. 48 of 30th December 1898;
- (xiv) Chief Minister's letter No. 9470 of 11th November 1909 about transfers of land in Mirpur.
- (xv) Chief Minister's letter No. 280 of 26th April 1915, about transfers of agricultural lands in the Tehsils of Mirpur, Bhimber, and Sri Ranbirsinghpura in the Province of Jammu; (tentative).
- (xvi) S. C. R. No. 48 of 27th March 1893.
- (xvii) S. C. R. No. 36 of 10th February 1903.
- (xviii) Irshad dated 29th Maghar 1943.
- (xix) Irshad dated 23rd Magh 1962.
- (xx) Irshad No. 742/613, dated 10th Phagan 1958.
- (xxi) Irshad No. 276, dated 17th Chet 1947.
- (xxii) Irshad No. 258/278, dated 22nd Maghar 1957.
- (xxiii) Irshad dated 15th Baisakh 1966.
- (xxiv) Irshad of 27th Poh 1951.
- (xxv) Irshad No. 13 of 18th Chet 1949.
- (xxvi) S. C. R. No. 50 dated 7th September 1900.
- (xxvii) Irshad No. 151/258, dated 27th Sawan 1972.
- (xxviii) Irshad No. 760/2076, dated 4th Fhagan 1974.
- (xxix) Irshad No. 254/23 dated 24th Sawan 1973.

- (xxx) Irshad of 19th Baisakh 1966.
 (xxxi) Hidayat (Settlement Department of 1966).
 (xxxii) Irshad of 2nd Bhadon 1970.
 (xxxiii) Irshad of 30th Jeth 1968.
 (xxxiv) Ailan No. 11 of 24th August 1896.

¹[Nothing in any of the following provisions of this Act, namely:—sections 3, 4, 9, 10, 15, 18, 19, 27, 30, clause (c) of section 31, sections

Saving clause. 32, 33, 34, 35, 46, 52, 55, 57, 58, 59, 61 and 62 shall be deemed in any way to affect.

(a) the terms or incidents of any transfer of property made or affected before the date of enforcement of the Transfer of Property Amendment Act 1996;

(b) the validity, invalidity, effect or consequences of anything already done or suffered before the aforesaid date;

(c) any right, title, obligation or liability already acquired, accrued or incurred before such date., or

(d) any remedy or proceeding in respect of such right, title, obligation or liability; and nothing in any other provision of this Act shall render invalid or in any way affect anything already done before such date as aforesaid in any proceeding pending in a Court on that date; and any such remedy and any such proceeding as is herein referred to may be enforced, instituted or continued, as the case may, as if this Act had not been passed.]

THE SCHEDULE—Omitted.

THE STATE OFFICIAL SECRETS ACT, 1977.

Act No. XLIII of 1977.

CONTENTS.

Preamble.

SECTION.

SECTION.

1. Title and extent.

2. Definitions.

3. Penalty for wrongful communication etc. of information.

4. Section 3 (1) (d) applicable to certain persons.

5. Offences under this Act committed in relation to military affairs should be cognizable; others non-cognizable.

6. Procedure when offender arrested.

7. Jurisdiction.

¹Saving clause to section 139 added *vide* Act VI of 1996 published in the Government Gazette dated 26th Sawan 1996.

THE STATE OFFICIAL SECRETS ACT, 1977.**Act No. XLIII of 1977.**

[Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No. 8272, dated 11th September, 1920 and State Council Resolution No. 1, dated 8th April 1925. (Notification No. 14-L/81).]

An Act to prevent the disclosure of official documents and information.

WHEREAS it is expedient to prevent the disclosure of official documents and information; It is hereby enacted as follows:—

1. (1) This Act may be called the State Official Secrets Act, 1977; and

(2) It extends to the whole of the State.

2. In this Act unless there is something repugnant in the subject or context:—

(1) Expression referring to communications includes any communication, whether in whole or in part, and whether the document, or information itself or the substance or effect thereof only be communicated:

(2) "Document" includes part of a document:

(3) "Civil affairs" means affairs—

(a) affecting the relations of His Highness with British Indian Government or any Indian Prince or Ruling Chief; or

(b) relating to fiscal arrangements or other important matters of the State to whatever department they may pertain where the affairs are of such a confidential nature that the public interest would suffer by their disclosure.

3. (1) (a) Where a person for the purpose of wrongfully obtaining information enters or is in any part of the premises of any office of the State and either obtains or attempts to obtain any document or copy thereof or knowledge of any military or civil affairs of His Highness which he is not entitled to obtain;

(b) where a person knowingly having possession of or control over any document or knowledge as has been obtained or taken by means of any act which constitutes an offence against this Act at any time wilfully and without lawful authority communicates or attempts to communicate the same to any person to whom the same ought not in the public interest to be communicated at that time; or

(c) where a person after having been entrusted in confidence with any document or information relating to the mili-

tary or civil affairs of the State wilfully and in breach of such confidence communicates the same, when in the public interest it ought not to be communicated; or

(d) where a person by means of his holding or having held an office under the State has lawfully or unlawfully either obtained possession of or control over any document or acquired any information and at any time corruptly or contrary to his official duty communicates or attempts to communicate that document or information to any person to whom the same ought not in the public interest to be communicated at that time;

he shall be punished with imprisonment for a term which may extend to one year or with fine or with both.

(2) Where a person commits any act specified in clause (a) of sub-section (1) without lawful authority or permission (the proof of which authority or permission shall be upon him) the Court may presume that he has committed such act for the purpose of wrongfully obtaining information.

4. Clause (d) of section 3(1) shall also apply to a person holding a contract with any department of the State or with the holder of any office under ¹[the Government] as such holder where such contract involves an obligation of secrecy and to any person employed by any person or body of persons holding such a contract who is under a like obligation of secrecy as if the person holding the contract and the person so employed were respectively holders of an office under ¹[the Government.]

5. (1) Notwithstanding anything in the Code of Criminal Procedure, every offence against this Act committed in relation to military affairs of the State shall, for the purposes of the said Act, be deemed to be cognizable:

Provided that a person accused of any such offence shall not be released on bail unless on the order of a Magistrate of the first class.

(2) Every other offence against this Act shall be non-cognizable.

6. (1) Any person, being a public servant as defined in the ²Ranbir Dand Bidhi, may arrest any person who in his view commits any of the offences described in section 5, sub-section (1), and any such person, or any Police Officer who has arrested any person on a charge of any such offence, and any Police Officer to whom any person arrested on any such charge has been made over, shall take or send him before the officer for the time being in command or charge of the nearest military station or camp or before a Magistrate of the first class.

¹In section 4 "the Government" substituted for "His Highness" vide Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

²Ranbir Penal Code.

(2) Where any person has been taken or sent before the commanding or other officer in accordance with sub-section (1), such officer may, if he thinks fit, discharge such person, but if he does not discharge him, shall without unnecessary delay, take or send him to the nearest Police station or to any Magistrate of the first class.

(3) Where any person has been taken or sent to a Police station or to a Magistrate under sub-section (2), the provisions of the Code of Criminal Procedure, shall, save as otherwise provided by section 7, apply to him as though he had been taken to such Police station or Magistrate without being taken or sent before the commanding or other officer.

7. (1) No Magistrate of the second or third class shall have jurisdiction to try any person for an offence against this Act.

(2) No Court shall proceed to the trial of any person for an offence against this Act except with the consent of '[the Government].'

THE JAMMU AND KASHMIR STATE MUSLIM DOWER ACT, 1977.

Act No. XLIV of 1977.

[Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No. 8372, dated 11th September 1920 and State Council Resolution No. 1, dated 8th April, 1925. (Notification No. 14-L/81).]

1. (1) This Act may be called the Jammu and Kashmir State Muslim Dower Act, 1977.

(2) It extends to the whole of the State.

2. Where the amount of dower stipulated for in any contract of dower by a Mohammedan is excessive with reference to the means of the husband, the entire sum provided in the contract shall not be awarded in any suit by decree in favour of the plaintiff, or by allowing it by way of set-off, lien or otherwise to the defendant; but the amount of the dower to be allowed by the Courts shall be reasonable with reference to the means of the husband and the status of the wife. This rule shall be applicable whether the suit to enforce the contract be brought in the husband's life-time or after his death.

¹In section 7(2) "the Government" substituted for "His Highness the Maharaja" vide Act X of 1996 published in the Government Gazette dated 15th Bhadon 1996.

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THE CIVIL COURTS ACT, 1977.

Act No. XLVI of 1977.

[Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No. 8372, dated 11th September, 1920 and State Council Resolution No. 1, dated 8th April, 1925. (Notification No. 14-L/81).]

1. This Act may be called the Jammu and Kashmir State Civil Courts Act, 1977.

Short title.

2. In this Act, unless there is something repugnant in the subject or context—

Definitions.

(i) "Small cause" means a suit of the nature cognizable by a Court of Small Causes under the Small Cause Courts Act;

(ii) "Value" used with reference to a suit means the amount or value of the subject matter of the suit.

3. There shall continue to be a High Court for the Jammu and Kashmir State.

The High Court.

4. The High Court shall be deemed for the purposes of all enactments for the time being in force to be the highest Civil Court of appeal or revision. ¹[* * *].

¹Words "subject to the control of, and the judicial power exercised by His Highness the Maharaja Sahib Bahadur" deleted by Notification No. 3-L/85 published in the Government Gazette dated 8th Bhadon 1985.

5. The High Court shall make rules for the transaction of the work of the High Court.
Rules for work in High Court.

6. (1) The High Court shall have a Registrar and shall have the power to appoint such Ministerial Officers as may be necessary for the administration of justice by the Court and for the exercise and performance of the powers and duties conferred and imposed on it by this Act.
Ministerial officers.

(2) The Registrar and the Ministerial Officers appointed under this section shall exercise such powers and discharge such duties of non-judicial or *quasi-judicial* nature as the High Court may direct.

(3) Any Ministerial Officer may be suspended or dismissed from his office by order of the High Court.

7. (1) The general superintendence and control over all other Civil Courts shall be vested in, and all such Courts shall be subordinate to, the High Court.
Superintendence and control of subordinate Courts.

(2) The High Court shall from time to time visit and inspect the proceedings of the Courts subordinate to the High Court and shall give such directions in matters not provided for by law as may be necessary to secure the due administration of justice.

8. (1) The High Court may make rules consistent with this Act and any other enactments for the time being in force—
Power to make rules.

(a) providing for the translation of any papers filed in the High Court and copying and printing any such papers or translations, and requiring from the persons at whose instance or on whose behalf they are filed payment of the expenses thereby incurred;

(b) declaring what persons shall be permitted to practise as petition-writers in the Courts of the State, regulating the conduct of business by persons so practising, and determining the authority by which breaches of rules under this clause shall be tried;

(c) determining in what cases legal practitioners shall be permitted to address the Court in English;

(d) prescribing forms for seals to be used by those Courts;

(e) regulating the procedure in cases where any person is entitled to inspect a record of any such Court or obtain a copy of the same, and prescribing the fees payable by such persons, for searches, inspections and copies;

(f) conferring and imposing on the Ministerial Officers of the subordinate Courts such powers and duties of a non-judicial or *quasi-judicial* nature as it thinks fit, and regulat-

ing the mode in which the powers and duties so conferred and imposed shall be exercised and performed;

(g) prescribing forms for such books, entries, statistics and accounts as it thinks necessary to be kept, made or compiled in those Courts or submitted to any authority;

(h) providing for the inspection of those Courts and the supervision of the working thereof;

(i) regulating the exercise of the control vested in the High Court by section 35 (4) of this Act; and

(j) regulating all such matters as it may think fit, with a view to promoting the efficiency of the judicial and Ministerial officers of those Courts, and maintaining proper discipline among those officers.

(2) Whoever breaks any rule made under clause (b) shall be punished with a fine which may extend to fifty rupees.

9. (1) The High Court shall keep such registers, books and accounts as may be necessary for the transaction of the business of the Court.

Registers, books, accounts and statements to be kept and furnished by High Court.

(2) The High Court shall comply with such requisitions as may be made by ¹[the Government] for certified copies, of, or extracts from records of the Court and the Courts subordinate thereto.

10. (1) The High Court, when sitting as a Court of Civil Judicature, shall take evidence and record judgments and orders in such manner as it, by rule, directs, and may frame forms for any proceeding in the Court in the exercise of its civil jurisdiction.

Procedure of High Court in exercise of civil jurisdiction.

²(2) Repealed.

11. The High Court has and shall have power to remove and to try and determine as a Court of extraordinary original jurisdiction any suit being or falling within the jurisdiction of any Court subject to its superintendence when the High Court shall think proper to do so, either on the agreement of the parties to that effect or for purposes of justice.

Extraordinary original jurisdiction of High Court.

12. The High Court shall have such power and authority in relation to the granting of probates of last wills and testaments and letters of administration of the goods, chattles, credits and all other effects whatsoever of persons dying intestate

Probate jurisdiction of High Court.

¹In sections 9, 14, 15, 16, 17, 18, 23, 27 and 37 the words "the Government" substituted for the words "His Highness" vide Act X of 1996 published in the Government Gazette dated 15th Bhadon 1996.

²Section 10(2) repealed by Notification No. 3-L/85 published in the Government Gazette dated 8th Bhadon 1985.

whether within or without the State as are or may be conferred on it by any law for the time being in force.

13. Besides the High Court, the Courts of Small Causes established under the Small Causes Courts Act, and the Courts established under any other enactment for the time being in force, there shall be the following classes of Civil Courts, namely:—

(1) The Court of the District Judge, also called the District Court;

(2) The Court of the Additional Judge;

(3) The Court of the Subordinate Judge; and

(4) The Court of the Munsiff.

14. (1) For the purposes of this Act ¹[the Government] shall divide the territories under the rule of His Highness into civil districts.

(2) ¹[The Government] may ²[on the recommendation of the High Court] alter the limits or the number of these districts.

15. ¹[The Government] shall ²[on the recommendation of the High Court] appoint as many persons as it think necessary to be District Judges, and shall post one such person to each district as District Judge of that district:

Provided that the same person may, if ¹[the Government] ²[on the recommendation of the High Court] think fit, be appointed to be District Judge of two or more districts.

16. (1) When the business pending before any District Judge requires the aid of an additional Judge or Judges for its speedy disposal, ¹[the Government] may ²[on the recommendation of the High Court] appoint such Additional Judge or Judges as may be necessary.

(2) An additional Judge so appointed shall discharge any of the functions of a District Judge which the District Judge may assign to him, and in the discharge of those functions he shall exercise the same powers as the District Judge.

17. ¹[The Government] may after consultation with the High Court fix the number of Subordinate Judges to be appointed and, when there is a vacancy in that number, may appoint such person as is recommended by the High Court to the said vacancy.]

18. (1) ¹[The Government] may after consultation with the High Court fix the number of

¹See footnote under section 9.

²Inserted by Notification 3-L/85 published in the Government Gazette dated 8th Bhadon 1985.

³Section 17 and section 18(1) substituted by Notification No. 3-L/85 published in the Government Gazette dated 8th Bhadon 1985.

Munsiffs to be appointed and, when there is a vacancy in that number, may, subject to rules, if any, made under sub-section (3), appoint such person as is recommended by the High Court to the said vacancy.]

(2) Whenever the business pending before a Munsiff requires the aid of an Additional Munsiff for its speedy disposal, the High Court may with the previous sanction of ¹[the Government], appoint an Additional Munsiff and such Munsiff shall discharge any of the functions which the Munsiff with the approval of the District Judge may assign to him and in the exercise of these functions he shall exercise all the powers of the Munsiff.

(3) The High Court may, with the previous sanction of ¹[the Government], make rules as to the qualifications of persons to be appointed Munsiffs.

19. The Court of the District Judge shall be deemed to be the District Court or principal Civil Court of original jurisdiction in the district.

20. Except as otherwise provided by any enactment for the time being in force, the Court of the District Judge shall have jurisdiction in original civil suits without limit as regards the value.

21. (1) The jurisdiction to be exercised in original civil suits as regards the value by any person appointed to be a Subordinate Judge, or Munsiff, shall, ²[be determined, by the High Court] either by including him in a class or grade, or otherwise as ³[it] thinks fit.

(2) The jurisdiction in the case of a Subordinate Judge may be without limit, but in the case of a Munsiff shall not extend to suits the value of which exceeds one thousand rupees:

Provided that ³[* * *] the High Court ³[may] direct by notification in the Government Gazette with respect to any Munsiff named therein that his jurisdiction shall extend to suits of such value not exceeding two thousand and five hundred rupees as may be specified in the notification.

22. (1) The local limits of the jurisdiction of a Subordinate Judge or Munsiff shall be such as the High Court may define.

¹See footnote under section 9.

²In section 21(1) as amended by 6-L/82 words "be determined by the High Court" and "it" substituted by Notification 3-L/85 published in the Government Gazette dated 8th Bhadon 1985.

³In section 21(2) proviso words "His Highness may on the recommendation of" omitted and "may" inserted by Notification 3-L/85 published in the Government Gazette dated 8th Bhadon 1985.

⁴Sections 22 and 23 recast by Notification 3-L/85 published in the Government Gazette dated 8th Bhadon 1985.

(2) When the High Court posts a Subordinate Judge or a Munsiff to a district the local limits of the district shall, in the absence of any directions to the contrary, be deemed to be the local limits of his jurisdiction.

¹**23.** ²[The Government] may after consultation with the High Court appoint any person to be an Honorary Subordinate Judge or Honorary Munsiff and the High Court may confer on such person all or any of the powers conferable under this Act on a Subordinate Judge or Munsiff with respect to particular classes of suits or with respect to suits generally in any local area.

Special Judges.

³**24.** (1) [The High Court] may, by notification in the Government Gazette confer, within such local limits as [it] thinks fit, upon any Subordinate Judge or Munsiff, the jurisdiction of a Judge of the Court of Small Causes under the Small Causes Courts Act for the trial of suits cognizable by such Courts, upto such value not exceeding five hundred rupees in the case of a Subordinate Judge or two hundred and fifty rupees in the case of a Munsiff, as [it] thinks fit, and may withdraw any jurisdiction so conferred.

Power to invest Subordinate Judge and Munsiff with Small Cause Court jurisdiction and Small Cause Court Judge with ordinary jurisdiction.

(2) [The High Court] may, by notification in the Government Gazette, confer within such local limits as [it] thinks fit on any Judge in charge of a Court of Small Causes all or any of the powers conferable on a Subordinate Judge or a Munsiff with respect to particular classes of [suits] or with respect to [suits] generally in any local area.

25. (1) The High Court may by general or special order authorise any Subordinate Judge to take cognisance of, or any District Judge to transfer to a Subordinate Judge under his control, any of the proceedings hereinafter mentioned or any class of those proceedings specified in such order.

Exercise by Subordinate Judge or Munsiff of jurisdiction of District Court in certain proceedings.

(2) The proceedings referred to in sub-section (1) are the following, namely:—

(a) proceedings under the Probate and Administration Act which cannot be disposed of by District Delegates; and references by Collectors under the fifth paragraph of the third Schedule of the Code of Civil Procedure;

¹See footnote under section 22.

²See footnote under section 9.

³In sub-sections (1) and (2) of section 24 for the words "His Highness" the words "the High Court", for the words "as he thinks fit" the words "as it thinks fit" and for the word "cases" the word "suits" wherever used substituted by Notification 3-L/85 published in the Government Gazette dated 8th Bhadon 1985.

(b) proceedings under the Guardian and Wards Act.

(3) The District Judge may withdraw any such proceedings taken cognisance of by or transferred to a Subordinate Judge and may either himself dispose of them or transfer them to a Court under his control competent to dispose of them.

(4) Proceedings taken cognisance of by or transferred to a Subordinate Judge, as the case may be, under this section shall be disposed of by him, subject to the rules applicable to like proceedings when disposed of by the District Judge.

26. (1) ¹[The High Court] may fix the place or places at which any Court under this Act is to be held.

Place of sitting of Court.

(2) The place or places so fixed may be beyond the local limits of the jurisdiction of the Court.

(3) Except as may be otherwise provided by any order under this section, a Court under this Act may be held at any place within the local limits of its jurisdiction.

²**27.** (1) Any District Judge may be suspended or removed from office by ³[the Government] on the report of the High Court.

Suspension or removal.

(2) Any Subordinate Judge or Munsiff may be suspended from office by the High Court subject to the confirmation of ³[the Government] and removed from office by ³[the Government] on the report of the High Court.]

28. Subject to the general superintendence and control of the High Court, the District Judge shall have control over all the Civil Courts under this Act within the local limits of his jurisdiction.

Control of Courts.

29. Notwithstanding anything contained in the Code of Civil Procedure, every District Judge may by written order direct that any civil business cognizable by his Court and the Courts under his control shall be distributed among such Courts in such manner as he thinks fit:

Power to distribute business.

Provided that no direction issued under this section shall empower any Court to exercise any powers or deal with any business beyond the limits of its jurisdiction.

30. (1) The Ministerial officers of the District Courts shall be appointed, and may be suspended or removed by the Judges of those Courts respectively.

Ministerial officers of subordinate Courts.

(2) The Ministerial officers of all courts controlled by a District Court, other than Courts of Small Causes, shall be

¹Substituted for "His Highness" by Notification 3-L/85 published in the Government Gazette dated 8th Bhadon 1985.

²Section 27 substituted by Notification 3-L/85 published in the Government Gazette dated 8th Bhadon 1985.

³See footnote under section 9 for change of expression in section 27.

appointed, and may be suspended or removed by the District Court.

(3) Every appointment under this section shall be subject to such rules as ¹[the High Court] may prescribe in this behalf, and in dealing with any matter under this section, a Judge of a Court of Small Causes shall act subject to the control of the District Court.

(4) Any order passed by a District Judge under this section shall be subject to the control of the High Court.

31. (1) A District or any Court under the control of District Court may fine, in an amount not exceeding one month's salary, any Ministerial Officer of the Court for misconduct or neglect in the performance of his duties.

Powers to fine Ministerial officers.

(2) The District Court may, on appeal or otherwise, reverse or modify an order made under sub-section (1) by any Court under its control, and may of its own motion, fine upto the amount of one month's salary any Ministerial officer of any Court under its control.

32. A District Court may, with the previous sanction of ¹[the High Court], delegate to any Subordinate Judge in the district the power conferred on a District Court by sections 28, 29, and 30; of this Act and section 24 of the Code of Civil Procedure, to be exercised by the Subordinate Judge in any specified portion of the districts, subject to the control of the District Court.

Delegation of District Judge's powers.

33. (1) Save as otherwise provided by any enactment for the time being in force, an appeal from a decree or order of a District Judge or Additional Judge exercising original jurisdiction, shall lie to the High Court.

Appeals from District Judge or Additional Judge.

(2) An appeal shall not lie to the High Court from a decree or order of an Additional Judge in any case in which the decree or order had been made by the District Judge, an appeal would not lie to that Court.

34. (1) Save as aforesaid an appeal from a decree or order of a Subordinate Judge shall lie—

Appeals from Subordinate Judges and Munsiffs.

(a) to the District Judge where the value of the original suit in which the decree or order was made did not exceed two thousand and five hundred rupees; and

(b) to the High Court in any other case.

¹Substituted for "His Highness" by Notification 3-L/85 published in the Government Gazette dated 8th Bhadon 1985.

²In section 34(4) "sub-section (2)" substituted for "section 25" and in sub-section (5) words "with the previous sanction of His Highness" deleted by Notification No. 3-L/85 published in the Government Gazette dated 8th Bhadon 1985.

(2) Save as aforesaid, an appeal from a decree or order of a Munsiff shall lie to the District Judge.

(3) Where the function of receiving any appeals which lie to the District Judge under sub-section (1) or sub-section (2) has been assigned to an Additional Judge, the appeals may be preferred to the Additional Judge.

(4) An appeal from the order of District Judge on the appeal from the order of the Munsiff under [sub-section (2)] shall lie to the High Court if a further appeal from the order of the District Judge is allowed by the law for the time being in force.

(5) The High Court may, [* * *], by notification in the Government Gazette, direct that appeals lying to the District Court under sub-section (2) from all or any of the decrees or orders passed in an original suit by any Munsiff shall be preferred to such Subordinate Judge as may be mentioned in the notification, and the appeals shall thereupon be preferred accordingly, and the Court of such Subordinate Judge shall be deemed to be a District Court for the purposes of all appeals so preferred.

NOTE.—Second appeals to the High Court are regulated by sections 100, 101, and 102 of the Code of Civil Procedure, which are given below for easy reference.—

100. (1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court on any of the following grounds, namely:—

- (a) the decision being contrary to law or to some usage having the force of law ;
- (b) the decision having failed to determine some material issue of law or usage having the force of law ;
- (c) a substantial error or defect in the procedure provided by this Code or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits ;
- (d) when the decision of the first Court in a suit in which the value of the subject matter exceeds Rs. 100 has been varied or reversed by the lower Appellate Court, on the ground that the decision is against the weight of the evidence in the case.

(2) An appeal may lie under this section from an appellate decree passed *ex parte*.

101. No second appeal shall lie except on the grounds mentioned in section 100.

102. No second appeal shall lie in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject matter of the original suit does not exceed five hundred rupees.

35. (1) A District Judge may transfer any appeals pending before him from the decrees or orders of Munsiffs to any Subordinate Judge under his administrative control competent to dispose of them.

Power to transfer to Subordinate Judges appeals from Munsiffs.

(2) The District Judge may withdraw any appeal so transferred and either hear and dispose of it himself or transfer it to a Court under his administrative control competent to dispose of it.

(3) Appeals transferred under this section shall be disposed of subject to the rules applicable to like appeals when disposed of by the District Judge.

(4) The powers conferred by this section shall be exercised subject to such general or special orders as may from time to time be issued in this behalf by the High Court.

¹[35-A. Except as otherwise provided by this Act any powers that may be conferred by the High Court on any person under this Act may be conferred on any such person either by name or by virtue of office.]

36. Whenever any person holding an office in the service of the State who, has been invested with any powers under this Act throughout any local area is transferred or posted at any subsequent time to an equal or higher office of the same nature within a like local area, he shall, unless ²[the High Court] otherwise directs or has otherwise directed, exercise the same powers in the local area to which he is so transferred or posted.

37. (1) Subject to such orders as may be made by ³[the Government] the days declared in the Jammu and Kashmir Government Gazette by ³[the Government] as public holidays shall be observed as close holidays in Civil Courts.

(2) A Judicial act done by a Civil Court on a day specified as close holiday shall not be invalid by reason only of its having been done on that day.

38. Subject to the provisions of any enactment for the time being in force, the High Court may of its own motion, or on the application of party, withdraw any proceeding which is pending in any Court subordinate to it, and for the withdrawal of which provision is not made in sections 24 and 141 of the Code of Civil Procedure, and may either itself dispose of the proceeding or transfer it for disposal to any other subordinate Court.

39. (1) Where any Civil Court has from any cause ceased to have jurisdiction with respect to any case, any proceeding in relation to that case which, if that Court had not ceased to have jurisdiction, might have been had therein may be had in the

¹Section 35-A inserted by Notification 3-L/85 published in Government Gazette dated 8th Bhadon 1985.

²Substituted for "His Highness" by Notification 3-L/85 published in Government Gazette dated 8th Bhadon 1985.

³See footnote under section 9.

Court to which the business of former Court has been transferred.

(2) Nothing in this section applies to cases for which provision is made in paragraph 17 of the second Schedule or section 37 of the Code of Civil Procedure or in any other enactment for the time being in force.

40. (1) The presiding officer of a Civil Court shall not try any suit or other proceeding to which he is a party or in which he is personally interested.

Bar against trial of certain suits and appeals.

(2) The presiding officer of an Appellate Civil Court under this Act shall not try an appeal against a decree or order passed by himself in another capacity.

(3) When any such suit, proceeding or appeal as is referred to in sub-section (1) or sub-section (2) comes before any such officer, the officer shall forthwith transmit the record of the case to the Court to which he is immediately subordinate, with a report of the circumstances attending the reference.

(4) The superior Court shall thereupon dispose of the case under section 24 of the Code of Civil Procedure.

41. For the purposes of the last foregoing section the presiding officer of a Court subject to the administrative control of the District Judge shall be deemed to be immediately subordinate to the Court of the District Judge, and for the purposes of the Code of Civil Procedure, the Court of such an officer shall be deemed to be of a grade inferior to that of the Court of the District Judge.

42. All powers conferred, local limits of jurisdiction of Courts defined and all places fixed for holding of Courts before this Act comes into force shall be deemed to have been conferred, determined and fixed under this Act.

Saving.

43. In every enactment for the time being in force and in every appointment, order, rule, bye-law, notification, form and document all references to the High Court or the Judge of the High Court shall be construed when necessary and with such grammatical variations as may be required as having been made to the High Court of Judicature, Jammu and Kashmir State, or a Judge thereof, as the case may be, except when the contrary intention appears from the subject or context.]

THE USURIOUS LOANS ACT, 1977.**Act No. XLVII of 1977.****CONTENTS.****SECTION.**

1. Short title and extent.
2. Definitions.
3. Rate of interest to be decreed by Courts.
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SECTION.

5. Contract for usufruct of property in lieu of interest.
6. Rate of interest on future adjustment of accounts.
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THE USURIOUS LOANS ACT, 1977.**Act No. XLVII of 1977.**

[Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No. 8372, dated 11th September, 1920 and State Council Resolution No. 1, dated 8th April 1925 (Notification No. 14-L/81).]

An Act to give additional powers to Courts to deal in certain cases with usurious loans of money or in kind.

WHEREAS it is expedient to give additional powers to Courts to deal in certain cases with usurious loans of money or in kind; It is hereby enacted as follows:—

1. (1) This Act may be called the Usurious Loans Act, 1977.
Short title and extent.

(2) It extends to the whole of the Jammu and Kashmir State.

(3) ¹[The Government] may, by notification in the Jammu and Kashmir Government Gazette, direct that it shall not apply to any specified area, class of persons, or class of transactions.

2. In this Act unless there is anything repugnant in the subject or context—
Definitions.

(1) "interest" means rate of interest and includes the return to be made over and above what was actually lent,

¹In Section 1(3) the words "the Government" substituted for the words "His Highness" vide Act X of 1996 published in the Government Gazette dated 15th Bhadon 1996.

whether the same is charged or sought to be recovered specifically by way of interest or otherwise;

(2) "loan" means a loan whether of money or in kind, and includes any transaction which is, in the opinion of the Court, in substance a loan;

(3) "suit to which this Act applies" means any suit—

(a) for the recovery of a loan made after the commencement of this Act; or

(b) for the enforcement of any security taken or any agreement, whether by way of settlement of account or otherwise made, after the commencement of this Act in respect of any loan made either before or after the commencement of this Act.

3. In any suit in which interest is recoverable, the amount Rate of interest to be decreed by Courts. shall be adjudged or decreed by the Court at the rate (if any) agreed upon by the parties; and if no rate shall have been agreed upon or where the Court considers the stipulated rate as excessive or unfair, at such rate as the Court shall deem reasonable.

4. Whenever a Court shall direct that a judgment or Rate of interest upon a judgment or decree. decree shall bear interest, or shall award interest upon a judgment or decree, it may order the interest to be calculated at the rate allowed in the judgment or decree upon the principal sum adjudged, or at such other rate as the Court shall think fit.

5. A mortgage or other contract for the loan of money, Contract for usufruct of property in lieu of interest. by which it is agreed that the use or usufruct of any property shall be allowed in lieu of interest, shall be binding upon the parties.

6. In any case in which an adjustment of accounts may Rate of interest on future adjustment of accounts. become necessary between the lender and the borrower of money upon any mortgage, conditional sale of landed property, or other contract whatsoever, which may have been entered into before, or which may be entered into after the passing of, this Act, interest shall be calculated at the rate stipulated therein, or if no rate of interest shall have been stipulated, and interest be payable under the terms of the contract, at such rate as the Court shall deem reasonable.

7. (1) In any suit to which this Act applies whether Re-opening of transactions. heard *ex parte* or otherwise if the Court has reason to believe—

(a) that the interest is excessive;
and

(b) that the transaction was, as between the parties thereto substantially unfair,—the Court may exercise all or

any of the following powers namely, may,—

- (i) re-open the transaction, take an account between the parties, and relieve the debtor of all liability in respect of any excessive interest;
- (ii) notwithstanding any agreement, purporting to close previous dealings and to create a new obligation, re-open any account already taken between them and relieve the debtor of all liability in respect of any excessive interest, and if anything has been paid or allowed in account in respect of such liability, order the creditor to repay any sum which it considers to be repayable in respect thereof; and
- (iii) set side either wholly or in part or revise or alter any security given or agreement made in respect of any loan, and if the creditor has parted with the security, order him to indemnify the debtor in such manner and to such extent as it may deem just;

Provided that in the exercise of these powers the Court shall not—

(i) re-open any agreement purporting to close previous dealings and to create a new obligation which has been entered into by the parties or any persons from whom they claim at a date more than six years from the date of the transaction;

(ii) do anything which affects any decree of a Court.

EXPLANATION.—In the case of a suit brought on a series of transactions the expression 'the transaction' means for the purposes of proviso (i) the first of such transactions.

(2) (a) In this section "excessive" means in excess of that which the Court deems to be reasonable having regard to the risk incurred as it appeared, or must be taken to have appeared, to the creditor at the date of the loan;

(b) in considering whether interest is excessive under this section, the Court shall take into account any amounts charged or paid, whether in money or in kind, for expenses, inquiries, fines, bonuses, premia, renewals or any other charges, and if compound interest is charged the periods at which it is calculated, and the total advantage which may reasonably be taken to have been expected from the transaction;

(c) in considering the question of risk, the Court shall take into account the presence or absence of security and the value thereof, the financial condition of the debtor and the result of any previous transactions of the debtor, by way of loan, so far as the same were known or must be taken to have been known, to the creditor;

(1) in considering whether a transaction was substantially unfair, the Court shall take into account all circumstances materially affecting the relations of the parties at the time of the loan or tending to show that the transaction was unfair, including the necessities or supposed necessities of the debtor at the time of the loan so far as the same were known, or must be taken to have been known to the creditor.

EXPLANATION.—Interest may of itself be sufficient evidence that a transaction was substantially unfair.

(3) This section shall apply to any suit whatever its form may be, if such suit is substantially one for the recovery of a loan or for the enforcement of any agreement or security in respect of a loan.

(4) Nothing in this section shall affect the rights of any transferee for value who satisfies the Court that the transfer to him was *bona fide*, and that he had at the time of such transfer no notice of any fact which would have entitled the debtor as against the lender to relief under this section.

For the purposes of this sub-section, a person shall be said to have "notice" of a fact when he actually knows that fact, or when, but for wilful abstention from an inquiry or search which he ought to have made or gross negligence he would have known it, or when, information of the fact is given to, or obtained by, his agent under the circumstances mentioned in the Contract Act, section 229.

(5) Nothing in this section shall be construed as derogating from the existing powers or jurisdiction of any Court.

THE PATENTS AND DESIGNS ACT, 1977.

Act No. XLVIII of 1977.

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THE PATENTS AND DESIGNS ACT, 1977.**Act No. XLVIII of 1977.**

[Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No. 8371, dated 11th September, 1920 and State Council Resolution No 1, dated 8th April, 1925. (Notification No. 14-L/81).]

An Act to amend the law relating to the protection of inventions and designs.

WHEREAS it is expedient to amend the law relating to the protection of inventions and designs; It is hereby enacted as follows:—

PRELIMINARY.

1. (1) This Act may be called the Patents and Designs Act, 1977.

(2) It extends to the whole of the State.

2. In this Act unless there is anything repugnant in the subject or context,—

(1) "article" means (as respects designs) any article of manufacture and any substance, artificial or natural or partly artificial and partly natural:

(2) "Controller" means the Controller of Patents and Designs appointed under this Act:

(3) "copyright" means the exclusive right to apply a design to any article in any class in which the design is registered:

(4) "design" means any design applicable to any article whether the design is applicable for the pattern, or the shape or configuration, or for the ornament thereof, or for any two or more of such purposes and by whatever means it is applicable whether by printing, painting, embroidering, weaving, sewing, modelling, casting, embossing, engraving, staining or any other means whatever, manual, mechanical or chemical, separate or combined, but does not include any trade or property mark as defined in 'section 367, Ranbir Dand Bidhi:

(5) "District Court" has the meaning assigned to that expression by the Code of Civil Procedure:

(6) "invention" means any manner of new manufacture, and includes an improvement and an alleged invention:

(7) "legal representative" means a person who in law represents the estate of a deceased person:

(8) "manufacture" includes any art, process, or manner of producing, preparing or making any article, and also any

¹Section 478 and 479 Ranbir Penal Code,

article prepared or produced by manufacture:

(9) "patent" means a patent granted under the provisions of this Act:

(10) "patentee" means the person for the time being entitled to the benefit of a patent:

(11) "prescribed" includes prescribed by rules under this Act: and

(12) "proprietor of a new and original design"—

(a) where the author of the design, for good consideration executes the work for some other person, means the person for whom the design is so executed; and

(b) where any person acquires the design or the right to apply the design to any article either exclusively of any other person or otherwise means, in the respect and to the extent in and to which the design or right has been so acquired, the person by whom the design or right is so acquired; and

(c) in any other case means the author of the design and where the property in, or the right, to apply the design devolved from the original proprietor upon any other person includes that other person.

PART I.

PATENTS.

Application for and grant of patent.

3. (1) An application for a patent may be made by any person whether he is a State subject or not and whether alone or jointly with any other person.

(2) The application must be made in the prescribed form and must be left at the Patent Office in the prescribed manner.

(3) The application must contain a declaration to the effect that the applicant is in possession of an invention whereof he, or in the case of a joint application, one at least of the applicants, claims to be the true and the first inventor or the legal representative or assign of such inventor and for which he desires to obtain a patent and must be accompanied by a specification and by the prescribed fee.

(4) Where the true and first inventor, is not a party to the application, the application must contain a statement of his name, and such particulars for his identification as may be prescribed, and the applicant must show that he is the legal representative or assign of such inventor.

4. (1) The specification must particularly describe and ascertain the nature of the invention and the manner in which

the same is to be performed.

(2) Where the Controller deems it desirable he may require that suitable drawings shall be supplied with the specification or at any time before the acceptance of the application and such drawings shall be deemed to form part of the specification.

(3) The specification must commence with the title, and must end with a distinct statement of the invention claimed.

(4) If in any particular case, the Controller considers that an application should be further supplemented by a model or sample of anything illustrating the invention or alleged to constitute an invention, such model or sample, as he may require shall be furnished before the acceptance of the application, but such model or sample shall not be deemed to form part of the specification.

5. (1) The Controller shall examine every application and if considers that—

(a) the nature of the invention is not fairly described, or

(b) the application, specification and drawings have not been prepared in the prescribed manner or relate to more than one invention, or

(c) the title does not sufficiently indicate the subject matter of the invention, or

(d) the statement of claim does not sufficiently define the invention, or

(e) the invention as described and claimed is *prima facie* not a new manufacture or improvement,

he may refuse to accept the application or require that the application, specification or drawings be amended before he proceeds with the application; and in the latter case the application shall, if the Controller so directs, bear date as from the time when the requirement is complied with.

(2) Where the Controller refuses to accept an application or requires an amendment the applicant may appeal from his decision to ¹[the Government].

(3) The investigations required by this section shall not be held in any way to guarantee the validity of any patent, and no liability shall be incurred by ¹[the Government] or any officer by reason of, or in connection with, such investigation, or any proceeding consequent thereon.

(4) Unless an application is accepted within twelve months from the date of the application, the application shall (except where an appeal has been lodged) become void:

¹In sections 5(2), (3), 8, 9, 10, 15, 16, 17, 22, 23, 25, 37, 39, 40, 41, 46, 50, 53, 54, 55, 64, 66, 68 and 74 the words "the Government" substituted for "His Highness" vide Act X of 1996 published in the Government Gazette dated 15th Bhadon 1996.

Provided that where an application is made for an extension of time for the acceptance of an application, the Controller shall, on payment of the prescribed fee, grant an extension of time to the extent applied for but not exceeding three months.

6. On the acceptance of an application, the Controller shall give notice thereof to the applicant and shall advertise the acceptance; and the application and specification, with the drawings (if any), shall be open to public inspection.

7. Where an application for a patent in respect of an invention has been accepted, any use or publication of the invention during the period between the date of application and the date of sealing such patent shall not prejudice the patent to be granted for the invention:

Provided that an applicant shall not be entitled to institute any proceedings for infringements unless and until a patent for the invention has been granted to him.

8. After acceptance of an application and before sealing a patent, the Controller shall, if he thinks it advisable or is directed by '[the Government]' so to do, refer the specification for enquiry and report to any person whom he thinks fit.

9. (1) Any person may, on payment of the prescribed fee at any time within three months from the date of the advertisement of the acceptance of an application, give notice at the Patent Office of opposition to the grant of the patent on any of the following grounds:—

(a) that the applicant obtained the invention from him, or from a person of whom he is the legal representative or assign; or

(b) that the invention, has been claimed in any specification filed in the State which is or will be prior date to the Patent, the grant of which is opposed; or

(c) that the nature of the invention or the manner in which it is to be performed is not sufficiently or fairly described and ascertained in the specification; or

(d) that the invention has been publicly used in any part of the State or has been made publicly known in any part of the State; but on no other ground.

(2) Where such notice is given, the Controller shall give notice of the opposition to the applicant and shall, on the expiration of those three months, after hearing the applicant and the opponent if desirous of being heard decide on the case.

(3) The decision of the Controller shall be subject to appeal to '[the Government]'.¹

10. (1) If there is no opposition or in case of opposition if the determination is in favour of the grant of a patent, a

¹See footnote under section 5.

patent shall, on payment of the prescribed fee, be granted, subject to such conditions (if any) as '[the Government]' think expedient, to the applicant, or in the case of a joint application to the applicants jointly, and the Controller shall cause the patent to be sealed with the seal of the Patent Office.

(2) A patent shall be sealed as soon as may be, and not after the expiration of 18 months from the date of application:—

(a) where the Controller has allowed an extension of the time within which such an application may be accepted a further extension of four months after the said eighteen months shall be allowed for the sealing of the patent;

(b) where the sealing is delayed by an appeal to '[the Government]' or by a reference under section 8 or by opposition to the grant of the patent, the patent may be sealed at such time as the Controller may direct;

(c) where the patent is granted to the legal representative of an applicant who has died before the expiration of the time which would otherwise be allowed for sealing the patent, the patent may be sealed at any time within twelve months after the date of his death;

(d) where in consequence of the neglect or failure of the applicant to pay any fee a patent cannot be sealed within the period allowed by this section that period may on payment of the prescribed fee and on compliance of the prescribed conditions, be extended to such an extent as may be prescribed.

11. Except as otherwise expressly provided by this Act, a patent shall be dated and sealed as of the date of the application:

Provided that no proceedings shall be taken in respect of an infringement committed before the publication of the specification.

12. (1) A patent sealed with the seal of the Patent Office shall, subject to the other provisions of this Act, confer on the patentee the exclusive privilege of making, selling and using the invention throughout the State and of authorising others so to do.

(2) Every patent may be in the prescribed form and shall be granted for one invention only but the specification may contain more than one claim and it shall not be competent for any person in a suit or other proceeding to take any objection to a patent on the ground that it has been granted for more than one invention.

13. (1) A patent granted to the true and first inventor or his legal representative or assign shall not be invalidated

¹See footnote under section 5.

by an application in fraud of him or by protection obtained thereon or by any use or publication of the invention subsequent to that fraudulent application during the period of protection.

(2) Where a patent has been revoked on the ground of fraud or any other ground, the Controller may, on the application of the true inventor or his legal representative or assign made in accordance with the provisions of this Act, grant to him a patent in lieu of and bearing the same date as the patent so revoked for any invention comprised in the revoked patent to which he was entitled:

Provided that no suit shall be brought for any infringement of the patent so granted committed before the actual date when such patent was granted.

Term of Patent.

14. (1) The term limited in every patent for the duration thereof shall, save as otherwise expressly provided by this Act be fourteen years from this date.

(2) A patent shall, notwithstanding anything therein or in this Act, cease if the patentee fails to pay the prescribed fee within the prescribed time:

Provided that the Controller upon the application of the patentee shall, on receipt of such additional fee as may be prescribed, enlarge the time to such an extent as may be applied for but not exceeding three months.

(3) If any proceeding is taken in respect of an infringement of the patent committed after a failure to pay any fee within the prescribed time, and before any enlargement thereof, the Court before which the proceeding is taken may, if it thinks fit, refuse to award any damages in respect of such infringement.

15. (1) A patentee may, after advertising in the prescribed manner his intention to do so present a petition to ¹[the Government] praying that his patent may be extended for a further term. But such petition must be left at the Patent Office at least six months before the time limited for the expiration of the patent and must be accompanied by prescribed fee.

(2) Any person may give notice to the Controller of objection to the extension.

(3) Where a petition is presented under sub-section (1) ¹[the Government] may, as it think fit, dispose of the petition itself or refer it to the High Court for decision.

¹See footnote under section 5.

(4) If the petition be referred to the High Court, then on the hearing of such petition under this section, the patentee and any person who has given notice under sub-section (2) of objection shall be made parties to the proceeding, and the Controller shall be entitled to appear and be heard.

(5) The Court to which the petition is referred shall, in considering its decision, have regard to the nature and merits of the invention in relation to the public, to the profits made by the patentee as such, and to all the circumstances of the case.

(6) If it appears to '[the Government]', or to the High Court when the petition has been referred to it that the patentee has been inadequately remunerated by his patent, '[the Government]' or the High Court as the case may be may by order extend the term of the patent for a further term not exceeding seven or in exceptional cases fourteen years or may order the grant of a new patent for such term as may be specified in the order and subject to the payment of such fees as may be prescribed and containing any restriction, conditions and provisions which '[the Government]' or the High Court, as the case may be, may think fit.

16. (1) Where any patent has ceased owing to the failure of the patentee to pay any prescribed fee within the prescribed time, the patentee may apply to the Controller in the prescribed manner for an order for the restoration of the patent.

(2) Every such application shall contain a statement of the circumstances which have led to the omission of the payment of the prescribed fee.

(3) If it appears from such statement that the omission was unintentional or unavoidable and that no undue delay has occurred in the making of the application the Controller shall advertise the application in the prescribed manner and within such time as may be prescribed any person may give notice of opposition at the Patent Office.

(4) Where such notice is given the Controller shall notify the applicant thereof.

(5) After the expiration of the prescribed period, the Controller shall hear the case, and subject to an appeal to '[the Government]', issue an order either restoring the patent subject to any conditions and restrictions deemed to be advisable or dismissing the application:

Provided that in every order under this section restoring a patent such provision as may be prescribed shall be inserted for the protection of persons who may have availed themselves of the subject matter of the patent after the patent had ceased.

¹See footnote under section 5.

Amendment of application or specification.

17. (1) An applicant or a patentee may at any time, by request in writing left at the Patent Office and accompanied by the prescribed fee, seek leave to amend his application for specification, including drawings, forming part thereof by way of disclaimer, correction or explanation, stating the nature of, and reasons for, the proposed amendment.

(2) If the application for a patent has not been accepted, the Controller shall determine whether and subject to what conditions (if any) the amendment shall be allowed.

(3) In any other case the request and nature of the proposed amendment shall be advertised in the prescribed manner and at any time within three months from its first advertisement any person may give notice at the Patent Office of opposition to the amendment.

(4) Where such notice is given the Controller shall give notice of the opposition to the person making the request and shall hear and decide the case.

(5) Where no notice of opposition is given, or the person so giving notice of opposition does not appear, the Controller shall determine whether and subject to what conditions if any the amendment ought to be allowed.

(6) The decision of Controller in either case shall be subject to an appeal to '[the Government]'.¹

(7) No amendment shall be allowed that would make the application or specification, as amended, claim an invention substantially larger than, or substantially different, from the invention claimed by the application or specification, as it stood before amendment.

(8) Leave to amend shall be conclusive as to the right of the party to make the amendment allowed, except in case of fraud; and the amendment shall be advertised in the prescribed manner and shall in all Courts and for all purposes be deemed to form part of the application or specification.

(9) This section shall not apply when and so long as any suit for infringement or proceeding before a Court for the revocation of the patent is pending.

18. In any suit for infringement of a patent or proceeding before a Court for the revocation of a patent, the Court may, by order allow the patentee to amend his specification by way of disclaimer in such manner, and subject to such terms as to costs, advertised or otherwise as the Court may think fit :

Provided that no amendment shall be so allowed that would make the specification as amended, claim an invention

¹See footnote under section 5.

substantially larger than, or substantively different from the invention claimed by the specification as it stood before the amendment and where an application for such an order is made to the Court, notice of the application shall be given to the Controller, and the Controller shall have the right to appear and be heard.

19. Where an amendment of a specification by way of disclaimer correction or explanation has been allowed under this Act no damages shall be given in any suit in respect of the use of the invention before the disclaimer, correction or explanation unless the patentee establishes to the satisfaction of the Court that his original claim was framed in good faith and with reasonable skill and knowledge.

Register of Patents.

20. (1) There shall be kept at the Patent Office a book called the Register of Patents, wherein shall be entered the names and addresses of grantees of patents, notifications of assignments and of transmissions of patents, of licenses under patents, and of amendments, extensions and revocations of patents, and such other matters affecting the validity or proprietorship of patents as may be prescribed.

(2) The register of inventions and address book existing at the commencement of this Act shall be incorporated with and form part of the Register of Patents under this Act.

(3) The register of patents shall be *prima facie* evidence of any matters by this Act directed or authorised to be inserted therein.

(4) Copies of deeds, licences and any other documents affecting the proprietorship in any patent or in any licence thereunder, must be supplied to the Controller in the prescribed manner for filing in the Patent Office, and, unless such copies have been so supplied such deeds, licences or other documents shall not be received as evidence of any transaction affecting a patent.

His Highness the Maharaja.

21. Subject to any conditions which His Highness may have imposed, a patent shall have to all intents the like effect as against His Highness as it has against a subject:

Provided that the officers or authorities administering any department of the service of His Highness may, by themselves, their agents, contractors or others, at any time after the application, use the invention for the service of His Highness on such terms as may either before or after the use thereof,

be agreed on, with the approval of ¹[the Government] between those officers or authorities and the patentee or, in default of agreement as may be settled by ¹[the Government] after hearing all parties interested.

Compulsory Licence and Revocation.

22. (1) Any person interested may present a petition to ²[the Government] which shall be left at the Patent Office, together with the prescribed fee, alleging that the reasonable requirements of the public with respect to a patented invention have not been satisfied and praying for the grant of a compulsory licence, or, in the alternative, for the revocation of the patent.

(2) ²[The Government] shall consider the petition and if the parties do not come to an arrangement between themselves ²[the Government] may, as it thinks fit either dispose of the petition itself or refer it to the High Court for decision.

(3) The provisions of sub-section (4) of section 15, prescribing the procedure to be followed in the case of references to the High Court under that section, shall apply in the case of references made to the High Court under this section.

(4) ¹If ²[the Government] is of opinion, or where a reference has been made under sub-section (2) to the High Court, that Court finds, that the reasonable requirements of the public with reference to the patented invention has not been satisfied, the patentee may be ordered to grant licence on such terms as ²[the Government] or the High Court, as the case may be, may think just, or, if ²[the Government] or the High Court is of opinion that the reasonable requirements of the public will not be satisfied by the grant of licences, the patent may be revoked by order of ²[the ³Government] or the High Court, as the case may be:

Provided that an order of revocation shall not be made before the expiration of four years from the date of the patent, if the patentee gives satisfactory reasons for his default.

(5) For the purposes of this section the reasonable requirements of the public shall not be deemed to have been satisfied,—

(a) if by reason of the default of the patentee to manufacture to an adequate extent and supply on reasonable terms the patented article or any parts thereof which are necessary for its efficient working, or to carry on the patented process to

¹In section 21 Proviso the words "the Government" within brackets substituted for the words "His Highness" in two places *vide* Act X of 1996 published in the Government Gazette dated 15th Bhadon 1996.

²See footnote under section 5.

an adequate extent or to grant licenses on reasonable terms any existing trade or industry or the establishment of any new trade or industry in the State is unfairly prejudiced or the demand for the patented article or the article produced by the patented process is not reasonably met; or

(b) if any trade or industry in the State is unfairly prejudiced by the conditions attached by the patentee, before or after the commencement of this Act to the purchase, hire or use of the patented article or to the using or working of the patented process.

(6) An order of '[the Government]' or of the High Court directing the grant of any licence under this section shall, without prejudice to any other method of enforcement operate as if it were embodied in a deed granting a licence and made between the parties to the proceeding.

23. (1) At any time not less than four years after the date of a patent granted under this Act, any person may apply to '[the Government]' for the revocation of the patent on the ground that the patented article or process is manufactured or carried on exclusively or mainly outside the State.

(2) '[The Government]' shall consider the application, and, if after enquiry, it is satisfied,—

(a) that the allegations contained therein are correct; and

(b) that the applicant is prepared, and is in a position, to manufacture or carry on the patented article or process in the State; and

(c) that the patentee refuses to grant a licence on reasonable terms—then, subject to the provisions of this section, and unless the patentee proves that the patented article or process is manufactured or carried on to an adequate extent in the State or gives satisfactory reasons why the article or process is not so manufactured or carried on, '[the Government]' may make an order revoking the patent either—

(i) forthwith or

(ii) after such reasonable interval as may be specified in the order, unless in the meantime it is shown to its satisfaction that the patented article or process is manufactured or carried on within the State to an adequate extent.

(3) No order revoking a patent shall be made under the last sub-section which is at variance with any treaty convention, arrangement or engagement with any foreign country or British possession.

(4) '[The Government]' may on the application of the patentee extend the time limited in any order made under sub-

¹See footnote under section 5.

section (2) clause (ii) for such period not exceeding two years as it may specify in a subsequent order, or revoke any order made under sub-section (2) clause (ii) or any subsequent order, if sufficient cause is in its opinion shown by the patentee.

24. A patentee may at any time, by giving notice in the prescribed manner to the Controller, offer to surrender his patent, and the Controller may, if after giving notice of the offer and hearing all parties who desire to be heard he thinks fit, accept the offer, and thereupon make an order for the revocation of the patent.

25. A patent shall be deemed to be revoked if '[the Government] declares, by notification in the Jammu and Kashmir Government Gazette, the patent or the mode in which it is exercised to be mischievous to the State or generally prejudicial to the public.

Legal Proceedings.

26. (1) Revocation of a patent in whole or in part may be obtained on petition to the High Court on all or any of the following grounds namely,—

(a) that any invention included in the statement of claim is of no utility ;

(b) that any invention included in the statement of claim, was not, at the date of application, for a patent new invention within the meaning of this Act;

(c) that the applicant was not the true and first inventor thereof or the assign or legal representative of such inventor thereof;

(d) that the original or any amended application or specification does not fulfil the requirements of the Act;

(e) that the applicant has knowingly or fraudulently, included in the application for a patent or in the original or any amended specification, as his invention something which was not new or whereof he was neither the inventor nor the assign nor the legal representative of such inventor;

(f) that the original or any subsequent application relating to the invention, or the original or any amended specification, contains a wilful or fraudulent mis-statement;

(g) that a part of the invention or the manner in which a part is to be made and used as described in the original or any amended specification is not thereby sufficiently described and that this insufficiency was fraudulent or is injurious to the public.

* See footnote under section 5.

(2) A petition for revocation of a patent may be presented:

(a) by the '[Government Advocate]' or any person authorised by him; or

(b) by any person alleging—

(i) that the patent was obtained in fraud of his rights or of the rights of any person under or through whom he claims; or

(ii) that he or any person under or through whom he claims was the true and first inventor of any invention included in the claim of the patentee; or

(iii) that he, or any person under or through whom he claims an interest in any trade, business or manufacture, had publicly manufactured, used or sold, within the State, before the date of the patent, anything claimed by the patentee as his invention.

(3) The High Court may, irrespective of any provisions of Code of Civil Procedure, 1977, in this behalf, require any person, other than the '[Government advocate]' or any persons authorised by him, applying for the revocation of a patent to give security for the payment of all costs incurred or likely to be incurred by any person appearing to oppose the petition.

27. (1) Notice of any petition for revocation of a patent under section 26 shall be served on all persons appearing from the register to be proprietors of that patent or to have shares or interests therein, and it shall not be necessary to serve the notice on any other person.

(2) The notice shall be deemed to be sufficiently served if a copy thereof is sent by post in a registered letter directed to the person and place for the time being stated in the register.

28. (1) The High Court may, if it thinks fit, direct an issue for the trial before itself or any District Court of any question arising upon a petition to itself under section 26 and the issue shall be tried accordingly.

(2) If the issue is directed to a District Court the finding of the Court shall not be subject to appeal but the evidence taken on the trial shall be recorded and a copy thereof certified by the Judge of the Court, shall be transmitted, together with any remarks which he may think fit to make thereon to the High Court and the High Court may thereupon act upon the finding of the District Court, or dispose of the petition upon the evidence recorded or direct a new trial as the justice of the case may require.

29. (1) A patentee may institute a suit in a District Court having jurisdiction to try the suit against any person

who, during the continuance of a patent acquired by him under this Act in respect of an invention makes, sells or uses the invention without his licence or counterfeits it, or imitates it.

(2) Every ground on which a patent may be revoked under this Act shall be available by way of defence to a suit for infringement.

30. A patentee shall not be entitled to recover any damages in respect of any infringement of a patent granted after the commencement of this Act from any defendant who proves that at the date of the infringement he was not aware nor had reasonable means of making himself aware, of the existence of the patent and the making of an article with the word "patent" "patented" or any word or words expressing or implying that a patent has been obtained for the article, stamped, engraved, impressed on, or otherwise applied to the article shall not be deemed to constitute notice of the existence of the patent unless the word or words are accompanied by the year and number of the patent:

Provided that nothing in this section shall affect any proceedings for an injunction.

31. In suit for infringement of a patent, the Court may, on the application of either party, make such order for injunction, inspection or account, and impose such terms and give such directions respecting the same and the proceedings thereon, as the Court may deem fit.

32. In a suit for infringement of a patent, the Court may certify that the validity of the patent came in question and if the Court so certifies, then in any subsequent suit in that Court for infringement of the same patent the plaintiff, on obtaining a final order or judgment in his favour, shall unless the Court trying the suit otherwise directs, have his full costs, charges and expenses of and incidental to the said suit properly incurred.

33. A Court making a decree in a suit under section 29 or an order on a petition under section 26 shall send a copy of the decree or order as the case may be, to the Controller, who shall cause an entry thereof and reference thereto to be made in the register of patents.

34. (1) In a suit or proceeding for infringement or revocation of a patent, the Court may, if it thinks fit, and shall on the request of either of the parties to the proceedings call in the aid of an assessor specially qualified, and try the case wholly or partially with his assistance.

(2) A Court exercising appellate jurisdiction in respect of such suit or proceeding may, if it thinks fit, call in the aid of an assessor as aforesaid.

(3) The remuneration, if any, to be paid to an assessor under this section shall in every case be determined by the Court and be paid by it as part of the expenses of the execution of this Act.

35. Where any person claiming to be the patentee of an invention by circulars, advertisements or otherwise, threatens any other person with any legal proceedings or liability in respect of any alleged infringement of the patent, any person aggrieved thereby may bring a suit against him in a District Court having jurisdiction to try the suit and may obtain an injunction against the continuance of such threats, and may recover such damage (if any) as he has sustained thereby, if the alleged infringement to which the threats related was not in fact an infringement of any legal rights of the person making such threats:

Provided that this section shall not apply if the person making such threats with due diligence commences and prosecute a suit for infringement of this patent.

Miscellaneous.

36. Where after the commencement of this Act a patent is granted to two or more persons jointly, they shall, unless otherwise specified in the patent, be treated for the purpose of devolution of the legal interest therein as joint tenants, but subject to any contract to the contrary, each of such persons shall, be entitled to use the invention for his own profit without accounting to the others, but shall not be entitled to grant a licence without their consent, and, if, any such person dies, his beneficial interest in the patent shall devolve on his legal representatives.

37. (1) An invention shall be deemed a new invention within the meaning of this Act:—

(a) if it has not, before the date of the application for a patent thereon, been publicly used in any part of the State, or been made publicly known in any part of the State, and

(b) if the inventor has not, by secret or experimental use made direct or indirect profits from his invention in excess of such an amount as the Court or ¹[the Government] as the case may be, in consideration of all the circumstances of the case, may deem reasonable.

(2) The public use or knowledge of an invention before the date of the application for a patent thereon shall not be deemed a public use or knowledge within the meaning of this Act, if the knowledge has been obtained surreptitiously

¹See footnote under section 5.

or in fraud of the true or first inventor or has been communicated to the public in fraud of such inventor or in breach of confidence:

Provided that such inventor has not acquiesced in the public use of his invention, and that, within six months after the commencement of that use, he applies for patent.

38. If a patent is lost or destroyed, or its non-production is accounted for to the satisfaction of the Controller, the Controller may at any time, on payment of the prescribed fee, seal a duplicate thereof.

39. (1) The exhibition of an invention at an industrial or international exhibition, certified as such by ¹[the Government] or the publication of any description of the invention during the period of the holding of the exhibition in the place where the exhibition is held, or the use of the invention during the period of the holding of the exhibition by any person elsewhere without the privity or consent of the inventor, shall not prejudice the right of the inventor to apply for and obtain a patent in respect of the invention or the validity of any patent granted on the application :

Provided that—

(a) the exhibitor, before exhibiting the invention, gives the Controller the prescribed notice of his intention to do so, and

(b) the application for a patent is made before or within six months from the date of the opening of the exhibition.

(2) ¹[The Government] may, by notification in the Jammu and Kashmir Government Gazette, apply this section to any exhibition mentioned in the notification in the like manner as if it were an industrial or international exhibition certified as such by ¹[the Government] and any such notification may provide that the exhibitor shall be relieved from the condition of giving notice to the Controller of his intention to exhibit and shall be so relieved either absolutely or upon such terms and conditions as may be stated in the notification.

40. The ²[Officer-in-charge] of the Museum may at any time require a patentee to furnish them with a model or sample of his invention on payment to the patentee of the cost of the manufacture of the model or sample, the amount to be settled, in case of dispute, by ¹[the Government].

¹See note under section 5.

²In Section 40 "officer-in-charge" substituted for "Minister-in-charge" vide Act X of 1996 published in the Government Gazette dated 15th Bhadon 1996.

PART II.

DESIGNS.

Registration of Designs.

41. (1) The Controller may, on the application of any person claiming to be the proprietor of any new or original design not previously published in the State, register the design under this part.

(2) The application must be made in the prescribed form and must be left at the Patent Office in the prescribed manner and must be accompanied by the prescribed fee.

(3) The same design may be registered in more than one class, and, in case of doubt as to the class in which a design ought to be registered, the Controller may decide the question.

(4) The Controller may, if he thinks fit, refuse to register any design presented to him for registration; but any person aggrieved by any such refusal may appeal to '[the Government].

(5) An application which owing to any default or neglect on the part of the applicant, has not been completed so as to enable registration to be effected within the prescribed time shall be deemed to be abandoned.

(6) A design when registered shall be registered as of the date of the application for registration.

42. Where a design has been registered in one or more classes of goods, the application of the proprietor of the design to register it in some one or more other classes shall not be refused, nor shall the registration thereof be invalidated:—

(a) on the ground of the design not being a new and original design, by reason only that it was so previously registered; or

(b) on the ground of the design having been previously published in the State by reason only that it has been applied to goods of any class in which it was so previously registered.

43. (1) The Controller shall grant a certificate of registration, to the proprietor of the design when registered.

(2) The Controller may, in case of loss of the original certificate, or in any other case in which he deems it expedient furnish one or more copies of the certificate.

44. (1) There shall be kept at the Patent Office a book called the Register of Designs, wherein shall be entered the names and addresses of proprietors of Registered designs, noti-

fications of assignments and of transmissions of registered designs, and such other matters as may be prescribed.

(2) The register of designs existing at the commencement of this Act shall be incorporated with, and form part of the register of designs under this Act.

(3) The register of designs shall be *prima facie* evidence of any matters by this Act directed or authorised to be entered therein.

Copy-right in Registered Designs.

45. (1) When a design is registered, the registered proprietor of the design shall, subject to the provisions of this Act, have copy-right in the design during five years from the date of registration.

(2) If within the prescribed time before the expiration of the said five years application for the extension of the period of copy-right is made to the Controller in the prescribed manner, the Controller shall, on payment of the prescribed fee, extend the period of copy-right for a second period of five years from the expiration of the original period of five years.

(3) If within the prescribed time before the expiration of such second period of five years application for the extension of the period of copy-right is made to the Controller in the prescribed manner, the Controller may, subject to any rules under this Act, on payment of the prescribed fee, extend the period of copy-right for a third period of five years from the expiration of the second period of five years.

46. (1) Before delivery on sale of any articles to which a registered design has been applied, the proprietor shall—

(a) (if exact representations or specimens were not furnished on the application for registration), furnish to the Controller the prescribed number of exact representations or specimens of the design; and, if he fails to do so, the Controller shall erase his name from the register, and thereupon the copy-right in the design shall cease; and

(b) cause each such article to be marked with the prescribed mark, or with the prescribed words or figures denoting that the design is registered, and, if he fails to do so the proprietor shall not be entitled to recover any penalty or damages in respect of any infringement of his copy-right in the design unless he shows that he took all proper steps to ensure the marking of the article, or unless he shows that the infringement took place after the person guilty thereof knew or had received notice of the existence of the copy-right in the design.

(2) Where a representation is made to ¹[the Government] by or on behalf of any trade or industry that in the interests of the trade or industry it is expedient to dispense with or modify as regards any class or description of articles any of the requirements of this section as to the marking, ¹[the Government] may, if it think fit, by rule under this Act dispense with or modify such requirements as regards any such class or description of articles to such extent and subject to such conditions as it think fit.

47. The disclosure of a design by the proprietor to any other person, in such circumstances as would make it contrary to good faith for that other person to use or publish the design, and the disclosure of a design in breach of good faith by any person other than the proprietor of the design and the acceptance of the first and confidential order for goods bearing new or original textile design intended for registration shall not be deemed to be a publication of the design sufficient to invalidate the copy-right thereof if registration thereof is obtained subsequently to the disclosure or acceptance.

48. (1) During the existence of copy-right in a design or such shorter period not being less than two years from the registration of the design as may be prescribed, the design shall not be open to inspection except by the proprietor or a person authorised in writing by him, or a person authorised by the Controller or by the Court, and furnishing such information as may enable the Controller to identify the design, and shall not be open to the inspection of any person except in the presence of the Controller or of an officer acting under him, and on payment of the prescribed fee; and the person making the inspection shall not be entitled to take a copy of the design, or of any part thereof:

Provided that, where registration of a design is refused on the ground of identity with a design already registered, the applicant for registration shall be entitled to inspect the design so registered.

(2) After the expiration of the copy-right in a design or such shorter period as aforesaid, the design shall be open to inspection, and copies thereof may be taken by any person on payment of the prescribed fee.

(3) Different periods may be prescribed under this section for different classes of goods.

49. On the request of any person furnishing such information as may enable the Controller to identify the design and on payment of the prescribed fee, the Controller shall inform such person whether the registration still exists in res-

¹See footnote under section 5.

pect of the design, and if so, in respect of what classes of goods and shall state the date of registration, and the name and address of the registered proprietor.

Industrial and International Exhibitions.

50. (1) The exhibition at an industrial or international exhibition certified as such by ¹[the Government], or the exhibition elsewhere during the period of the holding of the exhibition, without the privity or consent of the proprietor, of a design, or of any article to which a design is applied or the publication, during the holding of any such exhibition of a description of a design, shall not prevent the design from being registered, or invalidate the registration thereof:

Provided that—

(a) the exhibitor, before exhibiting the design or article or publishing a description of the design gives the Controller the prescribed notice of his intention to do so; and

(b) the application for registration is made before or within six months from the date of the opening of the exhibition.

(2) ¹[The Government] may, by notification in the Government Gazette, apply this section to any exhibition mentioned in the notification in like manner as if it were an industrial or international exhibition certified as such by ¹[the Government] and any such notification may provide that the exhibitor shall be relieved from the condition of giving notice to the Controller of his intention to exhibit and shall be so relieved either absolutely or upon such terms and conditions as may be stated in the notification.

Legal Proceedings.

51. (1) During the existence of copy-right in any design it shall not be lawful for any person—

(a) for the purpose of sale to apply or cause to be applied to any article in any class of goods in which the design is registered, the design or any fraudulent or obvious imitation thereof, except with the licence or written consent of the registered proprietor, or to do anything with a view to enable the design to be so applied; or

(b) knowing that the design or any fraudulent or obvious imitation thereof has been applied to any article without the consent of the registered proprietor, to publish or expose

¹See footnote under section 5.

or cause to be published or exposed for sale of that article.

(2) If any person acts in contravention of this section he shall be liable for every contravention—

(a) to pay to the registered proprietor of the design a sum not exceeding five hundred rupees recoverable as a contract debt, or

(b) if the proprietor elects to bring a suit for the recovery of damages for any such contravention and for any injunction against the repetition thereof to pay such damages as may be awarded and to be restrained by injunction accordingly:

Provided that the total sum recoverable in respect of any one design under clause (a) shall not exceed one thousand rupees.

(3) When the Court makes a decree in a suit under subsection (2) it shall send a copy of the decree to the Controller who shall cause an entry thereof to be made in the register of designs.

52. The provisions of this Act with regard to certificates of the validity of a patent and to the remedy in case of groundless threats of legal proceedings by a patentee shall apply in the case of registered designs in like manner as they apply in the case of patents with the substitution of references to the copy-right in a design for references to a patent, and of references to the proprietor of a design for references to the patentee and of references to the design for references to the invention.

PART III.

GENERAL.

Patent Office and proceedings thereat.

53. (1) ¹[The Government] may provide for the purposes of this Act an office which shall be called, and is in this Act referred to as the Patent Office.

(2) The Patent Office shall be under the immediate control of the Controller of Patents and Designs who shall act under the superintendence and direction of ¹[the Government].

(3) There shall be a seal for the Patent Office.

(4) Any act or thing directed to be done by or to the Controller may be done by or to any officer authorised by ¹[the Government].

¹See footnote under section 5.

54. '[The Government] may appoint the Controller and so many officers and clerks with such designations and duties as it think fit.

Fees.

55. (1) There shall be paid in respect of the grant of patents and registration of designs and applications therefor and in respect of other matters with relation to patents and designs under this Act such fees as may be prescribed by '[the Government] so, however, that the fees prescribed in respect of the instruments and matters mentioned in the schedule shall not exceed those there specified.

(2) A proceeding in respect of which a fee is payable under this Act or the rules made thereunder shall be of no effect unless the fee has been paid.

Provisions as to registers and other documents in the Patent Office.

56. There shall not be entered in any register kept under this Act, or be receivable by the Controller, any notice of any trust, expressed, implied or constructive.

57. Every register kept under this Act shall at all convenient times be open to the inspection of the public, subject to the provisions of this Act and certified copies, sealed with the seal of the Patent Office, of any entry in any such register shall be given to any person requiring the same on payment of the prescribed fee.

58. Reports of or to the Controller made under this Act shall not in any case be published or be open to public inspection.

59. (1) Where an application for a patent has been abandoned or become void, the specifications and drawings (if any) accompanying or left in connection with such application, shall not, save as otherwise expressly provided by this Act, at any time be open to public inspection or be published by the Controller.

(2) Where an application for a design has been abandoned or refused, the application and any drawing, photographs, tracings, representations or specimens left in connection with the application shall not at any time be open to public inspection or be published by the Controller.

60. The Controller may, on request in writing accompanied by the prescribed fee—

(a) correct any clerical error in or in connection with

¹See footnote under section 5.

an application for a patent or any specification,

(b) cancel the registration of a design either wholly or in respect of any particular goods in connection with which the design is registered,

(c) correct any clerical error in the representation of a design or in the name or address of the proprietor of any patent or design or in any other matter which is entered upon the register of patents or the register of designs.

61. (1) Where a person claims to be entitled by assignment transmission or other operation of law to a patent or to the copy-right in a registered design, the Controller shall, on request and on proof of title to his satisfaction, register his interest in such patent or design.

(2) Where any person claims to be entitled as mortgagee, licensee or otherwise to any interest in patent or registered design, the Controller shall on request and on proof of title to his satisfaction, cause notice of the interest to be entered in the prescribed manner in the register of patents or designs as the case may be.

(3) The person registered as the proprietor of a patent or design shall subject to the provisions of this Act and to any rights appearing from the register to be vested in and other person have power absolutely to assign, grant licences as to, or otherwise deal with, the patent or design and to give effectual receipts for any consideration for any such assignment, licence or dealing:

Provided that any equities in respect of the patent or design may be enforced in like manner as in respect of any other movable property.

62. (1) The High Court may, on the application in the prescribed manner of any person aggrieved by the non-insertion in or omission from the register of patents or designs of any entry, or by any entry made in either such register without sufficient cause or by any entry wrongly remaining on either such register or by an error or defect in any entry made in either such register make such order for making, expunging or varying such entry as it may think fit.

(2) The Court may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connection with the rectification of a register.

(3) The prescribed notice of any application under this section shall be given to the Controller, who shall have the right to appear and be heard thereon.

(4) Any order of the Court rectifying a register shall direct that notice of the rectification be served on the Controller in the prescribed manner who shall upon the receipt of such notice rectify the register accordingly.

Powers and Duties of Controller.

63. Subject to any rules in this behalf the Controller in any proceedings before him under this Act shall have the powers of a Civil Court for the purpose of receiving evidence and administering oaths and enforcing the attendance of witnesses and compelling the production of documents and awarding costs.

64. The Controller shall issue periodically a publication of patented inventions containing such information as '[the Government]' may direct.

65. Where any discretionary power is by, or under, this Act given to the Controller, he shall not exercise that power adversely to the applicant for a patent or for amendment of an application or of a specification or for registration of a design without (if so required within the prescribed time by the applicant) giving the applicant an opportunity of being heard.

66. The Collector may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Act apply to '[the Government]' for directions in the matter.

67. The Controller may refuse to grant a patent for an invention or to register a design, of which the use would, in his opinion, be contrary to law or morality.

68. (1) Where an appeal is declared by this Act to lie from the Controller to '[the Government]', the appeal shall be made within two months of the date of the order passed by the Controller, and shall be in writing, and accompanied by the prescribed fee.

(2) In calculating the said period of two months the time (if any) occupied in granting a copy of the order appealed against shall be excluded.

(3) '[The Government]' may, if it think fit, obtain the assistance of an expert in deciding such appeals, and the decision of '[the Government]' shall be final.

Evidence, etc.

69. A certificate purporting to be under the hand of the Controller as to any entry, matter or thing which he is authorised by this Act, or any rule made thereunder to make or do, shall be *prima facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or left undone.

¹See footnote under section 5.

70. Any application, notice or other document authorised or required to be left, made or given at the Patent Office or to the Controller, or to any other person under this Act, may be sent by post.

71. (1) If any person, is by reason of infancy, lunacy or other disability, incapable of making any statement or doing anything required or permitted by or under this Act, the lawful guardian, committee or manager (if any) of the person subject to the disability, or if there be none, any person appointed by any Court possessing jurisdiction in respect of his property, may make such statement, or a statement as nearly corresponding thereto as circumstances permit, and do such thing in the name and on behalf of the person subject to the disability.

(2) Any appointment may be made by the Court for the purposes of this section upon the petition of any person acting on behalf of the person, subject to the disability or of any other person interested in the making of the statement or the doing of the thing.

Agency.

72. The following documents, namely,—

- (1) applications for a patent,
 - (2) notices of opposition,
 - (3) applications for extension of term of patent,
 - (4) applications for the restoration of lapsed patents,
 - (5) applications for leave to amend,
 - (6) applications for compulsory licence or revocation,
- and,

(7) notices of surrenders of patent, shall be signed and verified, in the manner prescribed by the person making such applications or giving such notices:

Provided that, if such person is absent from the State, they may be signed and verified on his behalf by an agent resident in the State authorised by him in writing in that behalf.

73. (1) All other applications and communications to the Controller under this Act may be signed by, and all attendance upon the Controller may be made by or through a legal practitioner or by or through an agent authorised to the satisfaction of the Controller.

(2) The Controller may, if he sees fit, require—

- (a) any such agent to be resident in the State;
- (b) any person not residing in the State, to employ an agent residing in the State;
- (c) the personal signature or presence of an applicant opponent or other person.

Powers, etc., of the Government.

74. (1) ¹[The Government] may make such rules as it thinks expedient, subject to the provisions of this Act—

(a) for regulating the practice for registration under this Act;

(b) for classifying goods for the purposes of design;

(c) for making or requiring duplicates of specifications, drawings and other documents;

(d) for securing and regulating the publishing, and selling of copies, at such prices and in such manner as ¹[the Government] think fit, of, specifications, drawings and other documents;

(e) for securing and regulating the making, printing, publishing, and selling of indexes, to, and abridgements of, specifications and other documents in the Patent Office, and providing for the inspection of indexes and abridgements and other documents;

(f) generally for regulating the business of the Patent Office the conduct of proceedings before the Controller and all things by this Act placed under the direction or control of the Controller or of ¹[the Government]; and

(g) generally for the purpose of carrying into effect the provisions of this Act.

(2) The power to make rules under this section shall be subject to the condition of the rules being made after previous publication.

(3) All rules made under this section shall be published in the Government Gazette, and on such publication, shall have effect as if enacted in this Act.

Offence.

75. If any person uses on his place of business or on any document issued by him, or otherwise the words "Patent Office" or any other words suggesting that his place of business is officially connected with, or is, the Patent Office, he shall be punishable with fine which may extend to two hundred rupees, and, in the case of a continuing offence with further fine of twenty rupees, for each day on which the offence is continued after conviction therefor.

Saving and Repeal.

76. Nothing in this Act shall take away, abridge or prejudicially affect the prerogative of His Highness in relating to

¹See footnote under section 5.

the granting of any monopoly or to the withholding of a grant thereof.

77. (1) At any time within two years from the commencement of this Act, any person possessing an exclusive privilege under any special order of His Highness, may, by request in writing left at the Patent Office and on payment of the prescribed fee, seek leave to convert his exclusive privilege under the said order into a patent under this Act.

(2) Notice of any application under this section shall be sent to all persons appearing to have any shares or interests in the exclusive privilege.

(3) Save as aforesaid, the procedure prescribed by section 17 in the case of applications under that section shall, so far as may be, apply to every application under this section.

(4) Every patent granted under this section shall be dated as of the date of the exclusive privilege for which it is substituted.

THE SCHEDULE.

(See Section 57.)

FEES.	Rs.
On application for a patent	10
Before sealing a patent	30
Before the expiration of the 4th year from the date of the patent	50
Before the expiration of the 5th year from the date of the patent	50
Before the expiration of the 6th year from the date of the patent	50
Before the expiration of the 7th year from the date of the patent	50
Before the expiration of the 8th year from the date of the patent	50
Before the expiration of the 9th year from the date of the patent	100
Before the expiration of the 10th year from the date of the patent	100
Before the expiration of the 11th year from the date of the patent	100
Before the expiration of the 12th year from the date of the patent	100
Before the expiration of the 13th year from the date of the patent	100

	FEES.	Rs.
Provided that the fees for two or more years may be paid in advance.		
On application to extend term of a patent ..		50
Before the expiration of each year of the extended term of a patent or of a new patent granted under section 15 ..		100
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THE COPYRIGHT ACT, 1977.

Act No. XLIX of 1977.

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SCHEDULE.

THE COPYRIGHT ACT, 1977.

Act No. XLIX of 1977.

[Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No. 8372, dated 11th September 1920 and State Council Resolution No. 1, dated 8th April, 1925. (Notification No. 14-L/81).]

An Act for the encouragement of learning in the State territories by defining and providing for the enforcement of the right called Copyright therein.

WHEREAS for the encouragement of learning it is desirable that the existence of the right called Copyright should be placed beyond doubt and that the said right should be made capable of easy enforcement in the State territories; It is hereby enacted as follows:—

PART I.

COPYRIGHT.

1. (1) This Act may be called the copyright Act, 1977.

(2) It extends to the whole of the State.

2. (1) Subject to the provisions of this Act, Copyright shall subsist throughout the State for the term hereinafter mentioned in every origi-

Copyright.

nal, literary, dramatic, musical and artistic work, if—

(a) in the case of a published work, the work was first published within the State; and

(b) in the case of an unpublished work, the author was at the date of the making of the work a subject of, or resident within the State; but in no other works.

(2) For the purposes of this Act “copyright” means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatsoever, to perform, or in the case of a lecture to deliver, the work or any substantial part thereof in public; if the work is unpublished, to publish the work or any substantial part thereof; and shall include the sole right—

(a) to produce, reproduce, perform, or publish any translation of the work;

(b) in the case of a dramatic work, to convert it into a novel or other non-dramatic work;

(c) in the case of a novel or other non-dramatic work, or of an artistic work, to convert it into a dramatic work, by way of performance in public or otherwise;

(d) in the case of a literary dramatic or musical work, to make any record, perforated roll, cinematograph film, or other contrivance by means of which the work may be mechanically performed or delivered; and to authorise any such acts as aforesaid.

(3) For the purposes of this Act, publication, in relation to any work, means the issue of the copies of the work to the public, and does not include the performance in public of a dramatic or musical work, the delivery in public of a lecture, the exhibition in public of an artistic work, or the construction of an architectural work of art, but, for the purposes of this provision, the issue of photographs and engravings of works of sculpture and architectural works of art shall not be deemed to be publication of such works.

3. (1) Copyright in a work shall be deemed to be infringed by any person who, without the consent of the owner of the copyright, does anything the sole right to do which is by this Act conferred on the owner of the copyright: Provided that the following acts shall not constitute an infringement of copyright:—

(i) Any fair dealing with any work for the purposes of private study, research, criticism, review, or newspaper summary:

(ii) Where the author of an artistic work is not the owner of the copyright therein, the use by the author of any mould, cast, sketch, plan, model, or study made by him for the purpose of the work, provided that he does not thereby

repeat or imitate the main design of that work:

(iii) The making or publishing of paintings, drawings, engravings, or photographs of a work of sculpture or artistic craftsmanship, if permanently situate in a public place or building, or the making or publishing of paintings, drawings, engravings or photographs (which are not in the nature of architectural drawings or plans) of any architectural work of art:

(iv) The publication in a collection, mainly composed of non-copyright matter, *bona fide* intended for the use of schools, and so described in the title and in any advertisements issued by the publisher, of short passages from published literary works not themselves published for the use of schools in which copyright subsists:

Provided that not more than two of such passages from works by the same author are published by the same publisher within five years, and that the source from which such passages are taken is acknowledged:

(v) The publication in a newspaper of a report of a lecture delivered in public, unless the report is prohibited by conspicuous written or printed notice affixed before and maintained during the lecture at or about the main entrance of the building in which the lecture is given, and, except whilst the building is being used for public worship, in a position near the lecturer; but nothing in this paragraph shall affect the provisions in paragraph (i) as to newspaper summaries:

(vi) The reading or recitation in public by one person of any reasonable extract from any published work.

(2) Copyright in a work shall also be deemed to be infringed by any person who—

(a) sells or lets for hire, or by way of trade exposes or offers for sale or hire; or

(b) distributes either for the purposes of trade or to such an extent as to affect prejudicially the owner of the copyright; or

(c) by way of trade exhibits in public; or

(d) imports for sale or hire into the State;

any work which to his knowledge infringes copyright or would infringe copyright if it had been made within the State.

(3) Copyright in a work shall also be deemed to be infringed by any person who for his private profit permits a theatre or other place of entertainment to be used for the performance in public of the work without the consent of the owner of the copyright, unless he was not aware, and had no reasonable ground for suspecting, that the performance would be an infringement of copyright.

4. The term for which copyright shall subsist shall, except as otherwise expressly provided by this Act, be the life of the author and a period of fifty years after his death but in case of works first published in the State, copyright shall be subject to this limitation that the sole right to produce, reproduce, perform or publish a translation of the work shall subsist only for a period of ten years from the date of the first publication of the work; provided that if within the said period the author or any person to whom he granted permission so to do, publishes a translation of any such work in any language, copyright in such work, as regards the sole right to produce, reproduce, perform or publish a translation in that language shall not be subject to the limitation of ten years:

Term of copyright.

Provided that at any time after the expiration of twenty-five years, or in the case of a work in which copyright subsists at the passing of this Act thirty years, from the death of the author of a published work, copyright in the work shall not be deemed to be infringed by the reproduction of the work for sale if the person reproducing the work proves that he has given the prescribed notice in writing of his intention to reproduce the work, and that he has paid in the prescribed manner to, or for the benefit of, the owner of the copyright royalties in respect of all copies of the work sold by him calculated at the rate of ten per cent. on the price at which he publishes the work; and, for the purposes of this proviso, '[the Government] may make rules prescribing the mode in which notices are to be given, and the particulars to be given in such notices, and the mode, time, and frequency of the payment of royalties, including (if they think fit) rules requiring payment in advance or otherwise securing the payment of royalties.

5. If, at any time after the death of the author of a literary dramatic or musical work which has been published or performed in public, a complaint is made to the High Court Jammu and Kashmir State that the owner of the copyright in the work has refused to republish or to allow the republication of the work or has refused to allow the performance in public of the work and that by reason of such refusal the work is withheld from the public, the owner of the copyright may be ordered to grant a licence to reproduce the work or perform the work in public, as the case may be, on such terms and subject to such conditions as the Judge may think fit.

Compulsory licences.

¹In sections 4 and 16 the words "the Government" substituted for the words "the Chief Minister, Jammu and Kashmir State" or "the Chief Minister" vide Act X of 1996 published in the Government Gazette dated 15th Bhadon 1996.

6. (1) Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein:

Ownership of copy-right etc.

Provided that—

(a) where, in the case of an engraving, photograph, or portrait, the plate or other original was ordered by some other person and was made for valuable consideration in pursuance of that order, then, in the absence of any agreement to the contrary, the person by whom such plate or other original was ordered shall be the first owner of the copyright;

(b) where the author was in the employment of some other person under a contract of service or apprenticeship and the work was made in the course of his employment by that person, the person by whom the author was employed shall, in the absence of any agreement to the contrary, be the first owner of the copyright, but where the work is an article or other contribution to a newspaper, magazine, or similar periodical, there shall in the absence of any agreement to the contrary, be deemed to be reserved to the author a right to restrain the publication of the work, otherwise than as part of a newspaper, magazine, or similar periodical.

(2) The owner of the copyright in any work may assign the right, either wholly or partially, and either for the whole term of the copyright or for any part thereof, and may grant any interest in the right by licence, but no such assignment or grant shall be valid unless it is in writing signed by the owner of the right in respect of which the assignment or grant is made, or by his duly authorised agent:

Provided that, where the author of a work is the first owner of the copyright therein, no assignment of the copyright, and no grant of any interest therein, made by him (otherwise than by will) after the passing of this Act, shall be operative to vest in the assignee or grantee any rights with respect to the copyright in the work beyond the expiration of twenty-five years from the death of the author, and the reversionary interest in the copyright expectant on the termination of that period shall, on the death of the author, notwithstanding any agreement to the contrary, devolve on his legal personal representatives as part of his estate, and any agreement entered into by him as to the disposition of such reversionary interest shall be null and void, but nothing in the proviso shall be construed as applying to the assignment of the copyright in a collective work or a licence to publish a work or part of a work as part of a collective work.

(3) Where, under any partial assignment of copyright, the assignee becomes entitled to any right comprised in copyright, the assignee, as respects the rights so assigned,

and the assignor, as respects the rights not assigned, shall be treated for the purposes of this Act as the owner of the copyright, and the provisions of this Act shall have effect accordingly.

Civil Remedies.

7. (1) Where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of injunction or interdict, damages, accounts, and otherwise, as are or may be conferred by law for the infringement of a right.

(2) The costs of all parties in any proceedings in respect of the infringement of copyright shall be in the absolute discretion of the Court.

(3) In any action for infringement of copyright in any work, the work shall be presumed to be a work in which copyright subsists and the plaintiff shall be presumed to be the owner of the copyright unless the defendant puts in issue the existence of the copyright, or, as the case may be, the title of the plaintiff, and where any such question is in issue, then—

(a) if a name purporting to be that of the author of the work is printed or otherwise indicated thereon in the usual manner, the person whose name is so printed or indicated shall, unless the contrary is proved, be presumed to be the author of the work;

(b) if no name is so printed or indicated, or if the name so printed or indicated is not the author's true name or the name by which he is commonly known, and a name purporting to be that of the publisher or proprietor of the work is printed or otherwise indicated thereon in the usual manner, the person whose name is so printed or indicated shall, unless the contrary is proved, be presumed to be the owner of the copyright in the work for the purposes of proceedings in respect of the infringement of the copyright therein.

8. All infringing copies of any work in which copyright subsists or of any substantial part thereof, and all plates used or intended to be used for the production of such infringing copies, shall be deemed to be the property of the owner of the copyright who accordingly may take proceedings for the recovery of the possession thereof or in respect of the conversion thereof.

9. Where proceedings are taken in respect of the infringement of the copyright in any work and defendant in his defence alleges that he was not aware of the existence of the

Civil remedies for infringement of copyright.

Rights of owner against persons possessing or dealing with infringing copies etc.

Exemption of innocent infringer from liability to pay damages, etc.

copyright in the work, the plaintiff shall not be entitled to any remedy other than an injunction or interdict in respect of the infringement if the defendant proves that at the date of the infringement he was not aware, and had not reasonable ground for suspecting, that copyright subsisted in the work.

10. (1) Where the construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work has been commenced, the owner of the copyright shall not be entitled to obtain an injunction or interdict to restrain the construction of such building or structure or to order its demolition.

(2) Such of the other provisions of this Act as provide that an infringing copy of a work shall be deemed to be the property of the owner of the copyright or as impose summary penalties, shall not apply in any case to which this section applies.

11. An action in respect of infringement of copyright shall not be commenced after the expiration of three years next after the infringement.

Importation of copies.

12. (1) Copies made out of the State of any work in which copyright subsists which if made in the State would infringe copyright, and as to which the owner of the copyright gives notice in writing by himself or his agent to the Inspector General of Customs and Excise, that he is desirous that such copies should not be imported into the State, shall not be so imported, and shall, subject to the provisions of this section, be deemed to be prohibited from importation.

(2) Before detaining any such copies or taking any further proceedings with a view to the forfeiture thereof under the law relating to the Customs, the Inspector General of Customs and Excise may require the rules under this section, whether as to information, conditions, or other matters, to be complied with, and may satisfy himself in accordance with those rules that the copies are such as are prohibited by this section to be imported.

(3) '[The Government] may make rules, either general or special, respecting the detention and forfeiture of copies the importation of which is prohibited by this section, and the

¹In sections 12, 21 and 30 (3) the words "the Government" substituted for the words "His Highness" vide Act X of 1996 published in the Government Gazette dated 15th Bhadon 1996.

conditions, if any, to be fulfilled before such detention and forfeiture, and may, by such rules, determine the information, notices and security to be given, and the evidence requisite for any of the purposes of this section, and the mode of verification of such evidence.

(4) The rules may apply to copies of all works the importation of copies of which is prohibited by this section, or different rules may be made respecting different classes of such works.

(5) The rules may provide for the informant reimbursing the Customs Department all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention.

Special provisions as to certain works.

13. (1) In the case of a work of joint authorship, copyright shall subsist during the life of the author who first dies and for a term of fifty years after his death, or during the life of the author who dies last, whichever period is the longer, and references in this Act to the period after the expiration of any specified number of years from the death of the author shall be construed as references to the period after the expiration of the like number of years from the death of the author who dies first or after the death of the author who dies last, whichever period may be the shorter, and in the provisions of this Act with respect to the grant of compulsory licences a reference to the date of the death of the author who dies last shall be substituted for the reference to the date of the death of the author.

(2) Where, in the case of a work of joint authorship, some one or more of the joint authors do not satisfy the conditions conferring copyright laid down by this Act, the work shall be treated for the purposes of this Act as if the other author or authors had been the sole author or authors thereof:

Provided that the term of the copyright shall be the same as it would have been if all the authors had satisfied such conditions as aforesaid.

(3) For the purposes of this Act, "a work of joint authorship" means a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors.

(4) Where a married woman and her husband are joint authors of a work the interest of such married woman therein shall be her separate property.

(5) This section shall be read as subject to the provisions of section 4 relating to translations.

14. (1) In the case of a literary dramatic or musical work or an engraving, in which copyright subsists at the date of the death of the author, or, in the case of a work of joint authorship at or immediately before the date of the death of the author who dies last, but which has not been published, nor in the case of a dramatic or musical work, been performed in public, nor, in the case of a lecture, been delivered in public, before that date copyright shall subsist till publication, or performance or delivery in public, whichever may first happen, and for a term of 50 years thereafter, and the proviso to section 4 of this Act shall, in the case of such a work, apply as if the author had died at the date of such publication or performance or delivery in public as aforesaid.

(2) The ownership of an author's manuscript after his death, where such ownership has been acquired under a testamentary disposition made by the author and the manuscript is of a work which has not been published nor performed in public nor delivered in public, shall be *prima facie* proof of the copyright being with the owner of the manuscript.

(3) This section shall be read as subject to the provision of section 4 relating to the translations.

15. Without prejudice to any rights or privileges of His Highness, where any work has, whether before or after the commencement of this Act been prepared or published by or under the direction or control of His Highness or any State Department, the copyright in the work shall, subject to any agreement with the author, belong to His Highness, and in such case shall continue for a period of 50 years from the date of the first publication of the work.

16. (1) Copyright shall subsist in records, perforated rolls, and other contrivances by means of which sounds may be mechanically reproduced, in like manner as if such contrivances were musical works, but the term of copyright shall be 50 years from the making of the original plate from which the contrivance was directly or indirectly derived, and the person who was the owner of such original plate at the time when such plate was made shall be deemed to be the author of the work, and, where such owner is a body corporate, the body corporate shall be deemed for the purposes of this Act to reside within the State if it has established a place of business within the State.

(2) It shall not be deemed to be an infringement of copyright in any musical work for any person to make, within the State, records, perforated rules or other contrivances by means of which the work may be mechanically performed, if such

person proves—

(a) that such contrivances have previously been made by, or with the consent or acquiescence of, the owner of the copyright in the work; and

(b) that he has given the prescribed notice of his intention to make the contrivances, and has paid in the prescribed manner to, or for the benefit of, the owner of the copyright in the work royalties in respect of all such contrivances sold by him, calculated at the rate hereinafter mentioned:

Provided that:—

(i) Nothing in this provision shall authorise any alterations in, or omission from, the work reproduced, unless contrivances reproducing the work subject to similar alterations and omissions have been previously made by or with the consent or acquiescence of, the owner of the copyright, or unless such alterations or omissions are reasonably necessary for the adaptation of the work to the contrivances in question; and

(ii) for the purposes of this provision, a musical work shall be deemed to include any works so closely associated therewith as to form part of the same work, but shall not be deemed to include a contrivance by means of which sounds may be mechanically reproduced.

(3) The rate at which such royalties as aforesaid are to be calculated shall—

(a) in the case of contrivances sold within two years after the commencement of this Act by the person making the same, be two and one-half per cent; and

(b) in the case of contrivances sold as aforesaid after the expiration of that period, be five per cent., on the ordinary retail selling price of the contrivance calculated in the prescribed manner, so however that the royalty payable in respect of a contrivance shall, in no case, be less than a half anna for each separate musical work in which copyright subsists reproduced thereon, and, where the royalty calculated as aforesaid includes a fraction of a pice such fraction shall be reckoned as a pice:

Provided that, if, at any time after the expiration of seven years from the commencement of this Act, it appears to '[the Government]' that such rate as aforesaid is no longer equitable, it may, after holding a public inquiry, make an order either decreasing or increasing that rate to such extent as under the circumstances may seem just '[* * *]'.

¹ See footnote under section 4.

² In section 16(3) proviso the words "but any order so made shall be provisional only and shall not have any effect unless and until confirmed by His Highness, but, where an order revising the rate has been so made and confirmed, no further revision shall be made before the expiration of fourteen years from the date of the last revision", deleted vide Act X of 1996 published in the Government Gazette dated 15th Bhadon 1996.

(4) If any such contrivance is made reproducing two or more different works in which copyright subsists and the owners of the copyright therein are different persons, the sums payable by way of royalties under this section shall be apportioned amongst the several owners of the copyright in such proportions as, failing agreement, may be determined by arbitration.

(5) When any such contrivances by means of which a musical work may be mechanically performed have been made, then, for the purposes of this section, the owner of the copyright in the work shall, in relation to any person who makes the prescribed inquiries, be deemed to have given his consent to the making of such contrivances if he fails to reply to such inquiries within the prescribed time.

(6) For the purposes of this section, '[the Government] may make rules prescribing anything which under this section is to be prescribed, and prescribing the mode in which notices are to be given and the particulars to be given in such notices, and the mode, time, and frequency of the payment of royalties, and any such rules may if '[the Government] think fit, include rules, requiring payment in advance or otherwise securing the payment of royalties.

(7) In the case of musical works published before the commencement of this Act, the foregoing provisions shall have effect, subject to the following modifications and additions:—

(a) The conditions as to the previous making by, or with the consent or acquiescence of, the owner of the copyright in the work, and the restrictions as to alterations in or omissions from the work shall not apply:

(b) The rate of two and one-half per cent. shall be substituted for the rate of five per cent. as the rate at which royalties are to be calculated, but no royalties shall be payable in respect of contrivances sold before the first day of July, 1921, if contrivances reproducing the same work had been lawfully made, or placed on sale, within the State before the first day of July, nineteen hundred and eighteen:

(c) The saving contained in this Act of the rights and interests arising from, or in connection with, action taken before the commencement of this Act shall not be construed as authorising any person who has made contrivances by means of which the work may be mechanically performed to sell any such contrivances, whether made before or after the passing of this Act except on the terms and subject to the conditions laid down in this section:

(d) Where the work is a work on which copyright is conferred by an order of His Highness relating to a foreign

¹See footnote under section 4.

country, the copyright so conferred shall not, except to such extent as may be provided by the order include any rights with respect to the making of records, perforated rolls or other contrivances by means of which the work may be mechanically performed.

(8) Notwithstanding anything in this Act where a record, perforated roll, or other contrivances by means of which sounds may be mechanically reproduced has been made before the commencement of this Act, copyright shall, as from the commencement of this Act, subsist therein in like manner and for the like term as if this Act had been in force at the date of the making of the original plate from which the contrivance was directly or indirectly derived:

Provided that:—

(i) the person who, at the commencement of this Act, is the owner of such original plate shall be the first owner of such copyright; and

(ii) nothing in this provision shall be construed as conferring copyright in any such contrivance if the making thereof would have infringed copyright in some other such contrivance, if this provision had been in force at the time of the making of the first mentioned contrivance.

17. Notwithstanding anything in this Act it shall not be an infringement of copyright in an address of a political nature delivered at a public meeting to publish a report thereof in a newspaper.

18. The term for which copyright shall subsist in photographs shall be fifty years from the making of the original negative from which the photograph was directly or indirectly derived, and the person who was owner of such negative at the time when such negative was made shall be deemed to be the author of the work, and, where such owner is a body corporate, the body corporate shall be deemed for the purposes of this Act to reside within the State if it has established a place of business within such parts.

19. If it appears to His Highness that a foreign country does not give, or has not undertaken to give, adequate protection to the works of authors, who are subjects of the State, it shall be lawful for His Highness to direct that such of the provisions of this Act as confer copyrights on works first published within the State, shall not apply to works published after the date specified in the order, the authors whereof are subjects or citizens of such foreign country, and are not resident in the State, and thereupon those provisions shall not apply to such works.

20. (1) Where any person is immediately before the commencement of this Act entitled to any such right in any work as is specified in the first column of the Schedule to this Act, or to any interest in such a right, he shall, as from that date, be entitled to the substituted right set forth in the second column of the Schedule, or to the same interest in such a substituted right, and to no other right or interest, and such substituted right shall subsist for the term for which it would have subsisted if this Act, had been in force at the date when the work was made and the work had been one entitled to copyright thereunder:

Provided that:—

(a) if the author of any work in which any such right as is specified in the first column of the Schedule to this Act subsists at the commencement of this Act has, before that date, assigned the right or granted any interest therein for the whole term of the right, then at the date when, but for the passing of this Act, the right would have expired the substituted right conferred by this section shall, in the absence of express agreement, pass to the author of the work, and any interest therein created before the commencement of this Act and then subsisting shall determine; but the person who immediately before the date at which the right would so have expired was the owner of the right or interest shall be entitled at his option either:—

- (i) on giving such notice as hereinafter mentioned, to an assignment of the right or the grant of a similar interest therein for the remainder of the term of the right for such consideration as, failing agreement, may be determined by arbitration; or
- (ii) without any such assignment or grant, to continue to reproduce or perform the work in like manner as theretofore subject to the payment, if demanded by the author within three years after the date at which the right would have so expired, of such royalties to the author as, failing agreement, may be determined by arbitration, or, where the work is incorporated in a collective work and the owner of the right or interest is the proprietor of that collective work, without any such payment;

The notice above referred to must be given not more than one year nor less than six months before the date at which the right would have so expired, and must be sent by registered post to the author, or, if he cannot with reasonable diligence be found, advertised in the Government Gazette, and two newspapers;

(b) Where any person has, before the twenty sixth day of July, nineteen hundred and eighteen, taken any action whereby he has incurred any expenditure or liability in connection with the reproduction or performance of any work in a manner which at the time was lawful, or for the purpose of or with a view to the reproduction or performance of a work at a time when such reproduction or performance would, but for the passing of this Act, have been lawful, nothing in this section shall diminish or prejudice any rights or interest arising from or in connection with such action which are subsisting and valuable at the said date, unless the person who by virtue of this section becomes entitled to restrain such reproduction or performance agrees to pay such compensation as, failing agreement may be determined by arbitration.

(2) For the purposes of this section, the expression "author" includes the legal personal representatives of a deceased author.

(3) Subject to the provisions of section nineteen, subsections (7) and (8) of this Act, copyright shall not subsist in any work made before the commencement of this Act, otherwise than under, and in accordance with, the provisions of this section.

PART II.

International Copyright.

21. (1) ¹[The Government] may, by order, direct that this Act except (such parts, if any, thereof as may be specified in the Order) shall apply—

Power to extend Act
to foreign works.

(a) to works first published in a foreign country to which the Order relates, in like manner as if they were first published within the State;

(b) to literary, dramatic, musical and artistic works, or any class thereof, the authors whereof were, at the time of the making of the works, subjects or citizens of a foreign country to which the Order relates, in like manner as if authors were State subjects;]

(c) in respect of residence in a foreign country to which the Order relates, in like manner as if such residence were residence in the State;

and thereupon, subject to the provisions of this Part of this Act and of the Order, this Act shall apply accordingly:

¹See footnote under section 12.

Provided that—

(i) before making an order under this section in respect of any foreign country '[* * *]', ²[the Government] shall be satisfied that that foreign country has made, or has undertaken to make, such provisions, if any, as it appears to ²[the Government] expedient to require for the protection of works entitled to copyright under the provisions of Part I of this Act;

(ii) the Order may provide that the term of copyright within the State shall not exceed that conferred by the law of the country to which the Order relates ;

(iii) the Order may provide that the enjoyment of the rights conferred by this Act shall be subject to the accomplishment of such conditions and formalities (if any) as may be prescribed by the Order;

(iv) in applying the provisions of this Act as to ownership of copyright, the Order may make such modifications as appear necessary having regard to the law of the foreign country.

(2) An Order under this section may extend to all the several countries named or described therein.

PART III.

Penalties.

22. If any person knowingly:—

Offences in respect of infringing copies (a) makes for sale or hire any infringing copy of a work in which copyright subsists; or

(b) sells or lets for hire, or by way of trade exposes or offers for sale or hire, any infringing copy of any such work; or

(c) distributes infringing copies of any such work, either for the purposes of trade or to such an extent as to affect prejudicially the owner of the copyright; or,

(d) by way of trade exhibits in public any infringing copy of any such work; or

(e) imports for sale or hire into the State any infringing copy of any such work;

he shall be punishable with fine which may extend to twenty rupees for every copy dealt with in contravention of this section, but not exceeding five hundred rupees in respect of the same transaction.

¹Words "other than a country with which His Highness has entered into a convention relating to copyright" repealed by Notification No. 24-L/83 published in the Government Gazette dated 24th Phagan 1983.

²See footnote under section 12.

23. If any person knowingly makes, or has in his possession, any plate for the purpose of making infringing copies of any work in which copyright subsists, or knowingly and for his private profit causes any such work to be performed in public without the consent of the owner of the copyright, he shall be punishable with fine which may extend to five hundred rupees.

24. If any person, after having been previously convicted of an offence punishable under section 22 or section 23 is subsequently convicted of an offence punishable under either of these sections, he shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

25. (1) The Court before which any offence under this chapter is tried may, whether the alleged offender is convicted or not, order that all copies of the work or all plates in the possession of the alleged offender, which appear to it to be infringing copies, or plates for the purpose of making infringing copies, be destroyed or delivered up to the owner of the copyright, or otherwise dealt with as the Court may think fit.

(2) Any person affected by an order under sub-section (1) may, within thirty days of date of such order, appeal to the Court to which appeals from the Court making the order ordinarily lie; and such appellate Court may direct that execution of the order be stayed pending consideration of the appeal.

26. No Court inferior to that of a Magistrate of the first class shall try any offence against this Act.

27. The provisions of this chapter shall not apply to any case to which section 10 of this Act, regarding the restrictions on remedies in the case of a work of architecture, applies.

PART IV.

Miscellaneous.

28. Every suit or other Civil proceeding regarding infringement of copyright shall be instituted and tried in the High Court or the Court of the District Judge.

29. No suit or other Civil proceeding regarding infringement of copyright in any book the author whereof was at the time of making the book resident in the State, or of any book first published in the State, shall be dismissed by reason only that the registration of such book had not been effected in accordance with the provisions of the Copyright Act.

Effect of non-registration under the Act.

30. (1) In this Act, unless the context otherwise requires

Interpretation.

“literary work” includes maps, charts, plans, tables, and compilations;

“dramatic work” includes any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting form of which is affixed in writing or otherwise, and any cinematograph production where the arrangement or acting form or the combination of incidents represented give the work an original character;

“artistic work” includes works of painting, drawing, sculpture and artistic craftsmanship, and architectural works of art and engravings and photographs;

“work of sculpture” includes casts and models;

“architectural work of art” means any building or structure having an artistic character or design, in respect of such character or design, or any model for such building or structure, provided that the protection afforded by this Act shall be confined to the artistic character and design, and shall not extend to processes or methods of construction;

“engravings” include etchings, lithographs, wood-cuts, prints, and other similar works, not being photographs;

“photographs” includes photo-lithograph and any work produced by any process analogous to photography;

“cinematograph” includes any work produced by any process analogous to cinematography;

“collective work” means—

(a) an encyclopedia, dictionary, year book, or similar work;

(b) a newspaper, review, magazine, or similar periodical; and

(c) any work written in distinct parts by different authors, or in which works or parts of works of different authors are incorporated;

“infringing” when applied to a copy of a work in which copyright subsists, means any copy, including any colourable imitation, made or imported in contravention of the provisions of this Act;

“performance” means any acoustic representation of a work and any visual representation of any dramatic action in a work, including such a representation made by means of

any mechanical instrument;

“delivery” means in relation to a lecture, includes delivery by means of any mechanical instruments;

“plate”, includes any stereotype or other plate, stone, block, mould, matrix, transfer, or negative used or intended to be used for printing or reproducing copies of any work, and any matrix or other appliance by which records, perforated rolls for other contrivances for the acoustic representation of the work are or are intended to be made;

“lecture” includes address, speech, and sermon;

“musical works” means, in the case of musical works the authors whereof were at the time of the making of the works resident in the State, any combination of melody and harmony or either of them, which has been reduced to writing.

(2) For the purposes of this Act (other than those relating to infringements of copyright), a work shall not be deemed to be published or performed in public, and a lecture shall not be deemed to be delivered in public, if published, performed in public, or delivered in public, without the consent or acquiescence of the author, his executors, administrators or assigns.

(3) For the purposes of this Act, a work shall be deemed to be first published within the State, notwithstanding that it has been published simultaneously in some other place, unless the publication in parts of the State is colourable only and is not intended to satisfy the reasonable requirements of the public, and a work shall be deemed to be published simultaneously in two places if the time between the publication in one such place and the publication in the other place does not exceed fourteen days, or such longer period as may, for the time being, be fixed by order of ¹[the Government].

(4) Where, in the case of an unpublished work, the making of a work has extended over a considerable period, the conditions of this Act conferring copyright shall be deemed to have been complied with, if the author was, during any substantial part of that period, a subject of or a resident within the State.

(5) For the purposes of the provisions of this Act as to residence, an author of a work shall be deemed to be a resident in the State if he is domiciled within any such part.

¹See footnote under section 12.

SCHEDULE.

Section 20.

EXISTING RIGHTS.

Existing Right.	Substituted Right.
(a) In the case of works other than Dramatic and Musical Works.	
Copyright	.. Copyright as defined by this Act ¹ .
(b) In the case of Musical and Dramatic Works.	
Both copyright and performing right.	Copyright as defined by this Act ¹ .
Copyright but not performing right.	Copyright as defined by this Act, except the sole right to perform the work or any substantial part thereof in public.
Performing right, but not copyright.	The sole right to perform the work in public, but none of the other rights comprised in copyright as defined by this Act.

For the purposes of this Schedule the following expressions, where used in the first column thereof, have the following meaning:—

“Copyright” in the case of a work which according to the law in force immediately before the commencement of this Act has not been published before that date and statutory copyright wherein depends on publication, includes the right at common law (if any) to restrain publication or other dealing with the work.

“Performing right” in the case of a work which has not been performed in public before the commencement of this Act, includes the right at common law (if any) to restrain the performance thereof in public.

¹In the case of an essay, article, or portion forming part of and first published in a review, magazine, or other periodical or work of a like nature, the right shall be subject to any right of publishing the essay, article, or portion in a separate form to which the author is entitled at the commencement of this Act

THE RELIGIOUS ENDOWMENTS ACT, 1977.**Act No. L of 1977.****CONTENTS.****Preamble.****SECTION.****SECTION.**

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| 1. Short title and extent. | 5. Reference under Code of Civil Procedure. |
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THE RELIGIOUS ENDOWMENTS ACT, 1977.**Act No. L of 1977.**

[Sanctioned by His Highness the Maharaja Sahib Rahadur per Chief Minister's endorsement No. 8372, dated the 11th September 1920 and State Council Resolution No. 1, dated 8th April 1925. (Notification No. 14-L/81).] ✓

An Act to enable persons interested in religious endowments to sue the trustee, manager or superintendent of such endowment.

WHEREAS it is expedient to make provision to enable persons interested in a religious endowment to sue the trustee, manager or superintendent of such endowment; It is hereby enacted as follows:—

Preamble.

- 1.** (1) This Act may be called the Religious Endowments Act, 1977.

Short title.**Extent**

- (2) It shall extend to the whole of the State.

- 2.** Any person or persons interested in any mosque,

Person interested may singly sue in case of breach of trust etc.

temple or religious establishment, to which *Ain-i-Dharmarth* does not apply, or in the performance of the worship or of the the service thereof, or the trusts relating thereto, may, without

joining as plaintiff any of the other persons interested therein, sue before the Civil Court the trustee, manager or superintendent of such mosque, temple or religious establishment, for any misfeasance, breach of trust or neglect of duty, committed by such trustee, manager, or superintendent, in respect of the trusts vested in, or confided to them respectively;

and the Civil Court may direct the specific performance of any act by such trustee, manager or superintendent,

Powers of Civil Court.

and may decree damages and costs against such trustee, manager, or superintendent,

and may also direct the removal of such trustee, manager, or superintendent. ✓

3. The interest required in order to entitle a person to sue under the last preceding section need not be a pecuniary, or a direct or immediate, interest or such an interest as would entitle the person suing to take any part in the management or superintendence of the trusts.

Nature of interest entitling powers to sue.

Any person having a right of attendance, or having been in the habit of attending, at the performance of the worship or service of any mosque, temple or religious establishment or of partaking in the benefit of any distribution of alms, shall be deemed to be a person interested within the meaning of of the last preceding section. ✓

4. In any suit or proceeding instituted under this Act it shall be lawful for the Court before which such suit or proceeding is pending to order any matter in difference in such suit to be referred for decision to one or more arbitrators.

Reference to arbitrators.

Whenever any such order shall be made, the provisions of Schedule II of the Code of Civil Procedure shall in all respects apply to such order and arbitration, in the same manner as if such order had been made on the application of the parties under Schedule II paragraph 1 of the said Code.

Code of Civil Procedure applied.

5. Nothing in the last preceding section shall prevent the parties from applying to the Court, or the Court from making the order of reference under the said Schedule II, paragraph 1 of the said Code of Civil Procedure.

Reference under Code of Civil Procedure.

6. No suit shall be entertained under this Act without a preliminary application being first made to the Court for leave to institute such suit.

Application for leave to institute suits.

The Court, on the perusal of the application, shall determine whether there are sufficient prima facie grounds for the

institution of a suit, and, if in the judgment of the Court there are such grounds, leave shall be given for its institution.

If the Court shall be of opinion that the suit has been for the benefit of the trust and that no party to the suit is in fault, the Court may order the costs or such portion as it may consider just to be paid out of the estate.

7. Before giving leave for institution of a suit, or, after leave has been given, before any proceeding is taken, or at any time when the suit is pending, the Court may require ^{Costs.} account of trusts to be filed the trustee, manager or superintendent, as the case may be, to file in Court the accounts of the trust, or such part thereof as to the Court may seem necessary.

8. No suit or proceeding before any Civil Court under the preceding sections shall in any way ^{Proceedings for criminal breach of trust.} affect or interfere with any proceeding in a Criminal Court for criminal breach of trust.

THE COURT OF WARDS ACT, 1977.

Act No. LII of 1977.

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THE COURT OF WARDS ACT, 1977.**Act No. LII of 1977.**

[Sanctioned by His Highness the Maharaja Sahib Bahadur (per Chief Minister's letter No. 13017 dated 27th November 1920).]

An Act to make better provision for the Court of Wards in the Jammu and Kashmir State.

Whereas it is expedient to make better provision for the Court of Wards in the Jammu and Kashmir State; It is hereby enacted as follows:—

CHAPTER I.**PRELIMINARY.**

1. (1) This Act may be called the Jammu and Kashmir Court of Wards Act, No. LII of 1977.
Title and extent.

(2) It extends to the whole of the Jammu and Kashmir State.

2. All rules and appointments made, notifications and orders issued, authorities and powers conferred, farms and leases granted, rights acquired, liabilities incurred and other things done heretofore in matters dealt with by this Act shall, so far as may be, be deemed to have been respectively made, issued, conferred, granted, acquired, incurred and done under this Act.
Existing rules etc. to be deemed under the Act.

3. In this Act, unless there be something repugnant in the subject or context, the expression
Definitions.

(a) "immovalile property" shall include land, benefits to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth, but shall not include growing crops or grass ;

(b) "land-holder" shall mean a person who possesses any interest in land, whether as proprietor, assignee of the land revenue, lessee of waste lands or otherwise ;

(c) "minor" shall mean a person who has not, within the meaning of the State Majority Act, attained his majority; and

(d) "ward" shall mean any person in respect of whose person or the whole or any part of whose property, or of

whose person and property, the Court of Ward by this Act constituted, for the time being, has assumed superintendence, but shall not include a joint proprietor the superintendence of whose property has been assumed by the Court of Wards under section 8.

CHAPTER II.

THE COURT OF WARDS AND ITS JURISDICTION.

4. (1) The Revenue Minister shall be the Court of Wards for the Jammu and Kashmir State.
Constitution of the Court of Wards and its jurisdiction.

(2) The Court of Wards may exercise all or any of the powers conferred on it by this Act, either direct or through the Governor of the Province or the Wazir-i-Wazarat of the district within the limits of which any ward may at any time reside or any part of the property of any ward may be situate, or through any other person whom it may, at any time, in respect of any ward or the whole or any part of the property of any ward, appoint in that behalf.

(3) The Court of Wards may, with the sanction of '[the Government]' from time to time, by general or special order, or by rule made under this Act, delegate any of its powers to any Governor or Wazir-i-Wazarat or other person as aforesaid, and may, at any time, with the like sanction revoke any such delegation.

(4) The powers and authority by this Act vested in the Court of Wards shall be exercised by it subject to the control of '[the Government]'.
Power of the Government to make order, in certain cases, directing the Court of Wards to assume superintendence of properties of landholders.

5. (1) Any land holder may apply to '[the Government]' to make an order directing that his property be placed under the superintendence of the Court of Wards, and upon receiving any such application, '[the Government]' may, if it considers it expedient in the public interest so to do, make an order accordingly.

(2) When it appears to '[the Government]' that any landholder is :—

(a) by reason of being a female ; or

(b) owing to any physical or mental defect or infirmity ; or

¹In sections 4, 5, 7, 11, 16, 17(2), 34, 44, 45 and 54 for the words "His Highness" the words "the Government" substituted vide Act X of 1996 published in the Government Gazette dated 15th Bhadon 1996.

(c) owing to his having been convicted of a non-bailable offence and to his vicious habits or bad character; or

(d) owing to his having entered upon a course of wasteful extravagance likely to dissipate his property; incapable of managing or unfitted to manage his affairs, '[the Government] may make an order directing that the property of such land-holder be placed under the superintendence of the Court of Wards;

Provided that such an order shall not be made on the ground stated in clause (c) or on the ground stated in clause (d) unless such land-holder belongs to a family of political or social importance and '[the Government] is satisfied that it is desirable on grounds of public policy or general interest, to make such order.

(3) Every order made by '[the Government] under sub-section (1) or sub-section (2), shall be final and shall not be called in question in any Court of law.

6. When any land-holder is a minor or person adjudged by a competent Court to be of unsound mind and incapable of managing his affairs, the Court of Wards may make an order assuming the superintendence of the property or the person and property of such land-holder. 959

Power of Court of Wards, of its own motion, to assume superintendence.

7. (1) When, in respect of any land-holder, an order is made by '[the Government] under sub-section (1) or sub-section (2) of section 5, the Court of Wards shall assume the superintendence of the property of such land-holder; and may, in its discretion also assume the superintendence of his person.

Court of Wards shall assume superintendence in cases in which an order is made under section 5 and may do so when Governor or Wazir Wazarat is appointed guardian under the State Court of Wards Act.

(2) When the Governor or the Wazir Wazarat is appointed or declared to be guardian of the person or property, or, both of a minor, under the provisions of section 18 of the State Guardian and Wards Act, he shall intimate the fact to the Court of Wards, and the Court of Wards may thereupon, in its discretion, either assume, or refrain from assuming, the superintendence of the person or property or both (as the case may be) of such minor, and the provisions of this Act shall, if such superintendence be so assumed, apply to the person or property or both (as the case may be), of such minor.

8. When there are two or more proprietors of any property and the shares of the several proprietors have not been separated off, and the Court of Wards, acting under section 6, or section

Properties of which there are more proprietors than one.

assumes the superintendence of the property of one or more, but not all, of such proprietor. the Court of Wards may assume the superintendence also of the shares of such joint proprietor or joint proprietors as is or are not disqualified, paying any such proprietor the surplus income accruing from his share of the property. The superintendence assumed under this section shall extend only to the management of the share of the joint proprietor in such joint property and shall not, as regards such share, include the power to sell or mortgage the same or any part thereof or to grant a lease thereof for a period exceeding 20 years or to create any charge thereon or interest therein.

9. Whenever the Court of Wards assumes the superintendence of the person or property of any person under any of the provisions of this Act, the order of assumption shall be notified in the Government Gazette and shall specify the province, the Governor of which, or the district, the Wazir Wazarat of which, shall be put in charge on behalf of the Court of Wards.

10. Every order made by the Court of Wards assuming, under sections 6, 7 and 8 respectively, the superintendence of the person or property or both of any person shall take effect from the date fixed in this behalf in the notification published under section 9, and shall be final and shall not be called in question in any Court of law.

CHAPTER III.

INQUIRY AND ACTION PRECEDING ASSUMPTION OF SUPERINTENDENCE.

11. (1) For the purpose of satisfying himself as to whether in respect of any land-holder,
Inquiry by Governor or Wazir Wazarat in order to satisfy himself as to whether action should be taken under the Act. (a) '[the Government] should be moved to make an order under sub-section (2) of section 5, or

(b) the Court of Wards should be moved to make an order under section 6, or for the purpose of making any report which may be called for in connection with any application of a land-holder under sub-section (1) of section 5, the Governor or with his permission the Wazir Wazarat may make such inquiry into the circumstances of such land-holder as he may deem necessary, and, pending the

¹See footnote under section 4.

taking of any such action, may issue such orders for the temporary custody and protection of the person or property, or both, of such land-holder as he thinks fit.

¹[(1.a). When the Governor has reason to believe that the landlord whose estate is under inquiry is raising further loans, he may, to prevent the landlord from encumbering the estate further by incurring fresh liabilities during the pendency of the enquiry contemplated by this section, issue an injunction and notify it in the Government Gazette that no person shall advance fresh loans to the land-holder from the date of the publication of the notice till the question of assumption of charge by the Court of Wards has been decided. No court of law shall grant a decree on a suit instituted against the land-holder or the Court of Wards on basis of money advanced to the land-holder during such prohibition.]

(2) If the land-holder be a minor, the Governor or with his permission the Wazir Wazarat may direct that the person, if any, then having the custody of the minor, shall produce him, or cause him to be produced, at such place and time as the Governor or the Wazir Wazarat appoints, and may make such order for the future custody of the minor, pending the orders of the Court of Wards, as he thinks proper.

(3) If the minor is a female who ought not to be compelled to appear in public, the direction under sub-section (2) shall require her to be produced in accordance with the manners and customs of the country.

(4) If the land-holder is alleged to be or is of unsound mind, the Governor or with his permission the Wazir Wazarat shall make application to a competent Court in view to an enquiry being made by such Court for the purpose of ascertaining whether such person is or is not of unsound mind and incapable of managing his affairs.

12. (1) For the purposes of every enquiry to be made, or direction to be given in pursuance of any of the provisions of this Act, the Governor or the Wazir Wazarat may exercise all or any of the powers of a Civil Court under the State Code of Civil Procedure.

(2) For the purpose of protecting the property, or any part thereof, of any land-holder, pending an enquiry under sub-section (1) of section 11, Governor or with his permission the Wazir-Wazarat may, subject to the direction and control of the Court of Wards, take possession thereof and appoint a manager and such care-takers in respect thereto as he may deem fit.

¹Sub-section (1-a) added by Revenue Department Notification No. R-21 published in the Government Gazette dated 9th Maghar 1990.

19. No suit relating to the person of any ward or to any property under the superintendence of the Court of Wards shall be instituted in any Civil or Revenue Court until the expiration of two months after notice in writing has been delivered to, or left at, the office of the Governor of the province or the Wazir Wazarat of the district, specified in the order of assumption in the notification under section 9, stating the name and place of abode of the intending plaintiff, the cause of action, and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left:

Notice of suit.

Provided that notice under this section shall not be required in the case of any suit the period of limitation for which will expire within three months from the date of the notification under section 9.

20. (1) No suit (a) by or on behalf of a ward, or (b) affecting any property under the superintendence of the Court of Wards, shall be brought without the authority of the Court of Wards or of such officer as it may appoint in that behalf, and in every such suit brought in with such authority the Court of Wards shall be named as plaintiff.

(2) In every suit against a ward or affecting property under the superintendence of Court of Wards, the Court of Wards shall be named as the defendant.

(3) Suits brought by or against any Court of Wards may be instituted and conducted or defended on behalf of the Court of Wards by the Governor of the province or the Wazir Wazarat of the district, specified in the order of assumption in the notification under section 9, or by the manager or other person authorised, by general or special order or rule made under this Act in that behalf, by the Court of Wards.

CHAPTER V.

GENERAL PROVISIONS AS TO THE SUPERINTENDENCE OF THE PERSONS AND PROPERTIES OF WARDS.

21. As soon as conveniently may be, after the assumption by the Court of Wards, of the superintendence of the property of any person, the Wazir Wazarat of every district within which any part of such property may be situated or some person authorised, in writing, by him in this behalf, shall, subject to the orders of the

Court of Wards assuming superintendence of the property to take possession thereof. Procedure as to property situate in other districts.

Governor, take possession of all such property and all accounts and papers relating thereto and shall do all other acts and things which may be necessary to secure and protect the same and place it under proper custody and control.

22. The Court of Wards may, from time to time, direct such provision, as it may think fit, to be made in respect of the—

Powers of Court of Wards as to superintendence and control. Audit of accounts and management of legal affairs of wards and properties.

(1) superintendence and supervision of the persons of the wards and properties under its superintendence ;

(2) periodical or special audit, by an independent auditor of the accounts of properties generally, or of any particular property as it may think fit ;

(3) management of the legal affairs of properties generally, or of any particular property, as it may think fit.

23. The Court of Wards may, from time to time, regulate the expenses to be incurred in the supervision, care and management of the wards and properties under its superintendence, and generally in carrying out all or any of the

Power of Court of Wards to charge expenses against properties under its superintendence.

purposes of this Act, and may order that such expenses, or any of them, including all salaries, gratuities and leave allowances of establishments and all contingent and other expenses whatsoever which it shall consider requisite, be charged against such property generally, or against any one or more properties comprised in such property for the purposes of which such establishments are, or have been, entertained or such expenses have been incurred.

24. (1) The Court of Wards may pass such orders as it thinks fit in respect of the residence of any

Residence and education of wards.

ward whose person is for the time being under its superintendence and, when he is a male minor, in respect of his education.

(2) The Court of Wards may, from time to time, require any such male minor ward to attend to such tutor, class, school or college, for the purposes of education, as it thinks fit.

25. (1) The Court of Wards may, from time to time determine what sums shall be allowed in respect

Allowance for ward and his family.

of the expenses of any ward and of his family and dependents.

(2) The Court of Wards may, from time to time, determine what sums may be spent on the education of any minor ward whose person is for the time being under its superintendence.

CHAPTER VI.

ASCERTAINMENT AND LIQUIDATION OF LIABILITIES
OF WARDS.

26. (1) On the publication of a notification under section 9, the Governor of the province or the Wazir Wazarat of the district, specified in the order of assumption or any other Governor or Wazir Wazarat whom the Court of Wards may appoint in that behalf, shall publish in the Gazette a notice, calling upon all persons having claims against the ward or against the property under the superintendence of the Court of Wards to notify the same in writing to such Governor or Wazir Wazarat, within six months from the date of the publication of the notice.

(2) The notice may also be published at such places and in such other manner as the Court of Wards may, by general or special order, direct or by rule, made under this Act, prescribe.

(3) The Governor or the Wazir Wazarat may, if he is satisfied that any claimant had reasonable excuse for not submitting his statement of claim within six months, receive his claim at any time after the expiry of the period aforesaid, but any claim so received shall, unless the Governor otherwise directs and notwithstanding any law, contract, decree or award to the contrary cease to carry interest from the date of the expiry of the period aforesaid.

27. (1) Every claimant shall together with his statement of claim, present full particulars thereof.

Presentation of claims.

(2) Every document (including entries in books of account) on which the claimant founds his claim, or on which he relies in support thereof, shall be produced before the Governor or the Wazir Wazarat issuing the notice mentioned in section 26 with the statement of claim.

(3) Every such document shall be accompanied by a true copy of the same. The Governor or the Wazir Wazarat issuing the notice mentioned in section 26 or such officer as he may appoint in that behalf shall mark the original document for the purpose of identification, and after examining and comparing the copy with it, shall retain the copy, and return the original to the claimant.

28. (1) The Governor or the Wazir Wazarat issuing the notice mentioned in section 26 shall, after such enquiry as he may consider necessary decide, as to each claim made against any ward or property, in manner in section 26 and section 27 provided, whether such claim is, either in whole or in part, to be admitted or disallow-

Examination into, admission and rejection of claims.

ed, and shall intimate, in writing, his decision in respect of each such claim to the claimant thereof. If such liabilities cannot be paid at once, the decision shall fix the interest, (if any) to be paid thereon from the date of such decision to the date of the payment and discharge of such claim.

29. Every debt or liability (other than debts due to, or liabilities incurred in favour of the State) to which any ward is subject, or with which any property under the superintendence of the Court of Wards or any part thereof is charged, and which is not duly notified to the said Governor or the Wazir Wazarat issuing the notice mentioned in section 26 within the time and in the manner hereinbefore prescribed, shall, subject to the provisions of section 7 and section 13 of the State Limitation Act, be deemed for all purposes and on all occasions, whether during the continuance of the superintendence of the Court of Wards or afterwards, to have been duly discharged:

Provided that the provisions of this section shall not be deemed to extinguish any such debt or liability in any case in which the Court of Wards, after assuming the superintendence of such property, release the same from such superintendence without ascertaining and dealing with the liabilities thereof as in this chapter provided in that behalf, and that, in any such case, in computing the period of limitation applicable to any suit or application for the recovery of any such debt or the enforcement of any such liability, the time from the date of the notification of claim under section 26, to the date of the release of the property from the superintendence of the Court of Wards, shall be excluded.

30. If any document in the possession or under the control of the claimant is not produced by him as required by section 27, such document shall not be admissible in evidence in any suit or proceeding thereafter brought against a ward or as affecting any property under the superintendence of the Court of Wards by the claimant, or by any person claiming under him.

31. (1) Nothing contained in this chapter shall be deemed to empower the Governor or the Wazir Wazarat issuing the notice mentioned in section 26 to disallow any claim notified under the said section which is based upon a decree passed by any competent Court, and any such decree may be proved by the production of a certified copy of the same accompanied by a certificate from the proper Court that such decree remains unsatisfied.

(2) On the publication of a notice under section 26, all suits and all proceedings in execution of any decree against a

ward or as affecting any property under the superintendence of the Court of Wards then pending in any Civil Court shall be stayed until the plaintiff or the decree-holder files a certificate that the claim has been notified in accordance with section 26.

(3) No fresh proceedings in execution of any decree against a ward or as affecting such property, other than a decree in respect of a transaction subsequent to the date of the notification under section 9 shall be instituted in, nor shall any attachment or other process in execution of such decree be issued by, any Civil Court, until the decree-holder files a certificate to the effect specified in clause (2).

32. (1) Subject to the provisions of section 19 and section 31, nothing in this chapter shall be construed as preventing any claimant from bringing or prosecuting any suit, in any competent Court, in respect of any claim which has been duly notified, within the time and in the manner hereinbefore prescribed, to the Governor or the Wazir Wazarat issuing the notice mentioned in section 26, which has whether in whole or in part, been disallowed by him, but no suit shall at any time be brought or be maintainable in respect of any claim which has not been so notified or to set aside or modify the order of a Governor or the Wazir Wazarat issuing the notice mentioned in section 26 (if any) fixing a date for the payment of such claim or regulating the order on which claims against the ward or properties under the superintendence of the Court of Wards shall be paid.

(2) In computing any period of limitation prescribed by the State Limitation Act or section 48 of the State Civil Procedure Code, every period during which proceedings have been stayed or temporarily barred by reasons of the provisions of this section or of section 31 shall be excluded.

33. No appeal shall lie from any decision given or order made by a Governor or a Wazir Wazarat under this chapter, but nothing in this section shall be deemed in any way to limit or interfere with the power of the Court of Wards to revise any such decision or order.

34. For the purposes of this chapter, ¹[the Government] may, at any time or at any stage of any proceedings thereunder invest any person with all or any of the powers of Governor or Wazir Wazarat.

The Government may confer the powers of Governor or Wazir Wazarat on any person.

Appeal and revision.

¹See footnote under section 4.

CHAPTER VII.

GUARDIANS AND MANAGERS.

35. (1) The Court of Wards may, from time to time, appoint guardians for the care of the persons of such wards as are minors or of unsound mind, or are suffering from any physical or mental defect or infirmity, or are females and unmarried, and may control and remove such guardians, and no appointment of a guardian for any ward shall be valid, unless and until it has been confirmed by the Court of Wards.

Appointment, removal
and control of guardians
and tutors.

(2) In appointing a guardian under this section, the Court of Wards shall be guided, as far as may be, by the provisions of section 17 of the State Guardians and Wards Act, and if a ward leaves or is removed from the custody of a guardian appointed under this section, the Governor of the province or the Wazir Wazarat of the district, specified in the notification issued under section 9, may exercise the powers conferred by section 25 of the said Act on a Court as defined in that Act.

(3) The Court of Wards may appoint any person to be the tutor of any minor male ward and may control and remove such tutor. Every tutor so appointed shall discharge such duties and regulate his conduct in such manner as the Court of Wards may from time to time direct.

36. No person who would be the next legal heir of a ward, or would otherwise be immediately interested in outliving a ward, shall be appointed to be his guardian; but nothing in this section shall apply to the mother of a ward or to a testamentary guardian.

No person who can suc-
ceed to ward to be ap-
pointed guardian.

37. A guardian appointed under this chapter shall be charged with the custody of the ward, and shall, subject to the supervision and direction of the Court of Wards, and the rules (if any) made, under this Act, in that behalf, make suitable provision for his maintenance, health and, if he be a minor, his education and such other matters as the personal law to which the ward is subject, requires and shall.—

Duties and responsi-
bilities of guardians.

(a) give such security, if any, as the Court of Wards think fit for the due performance of his duty;

(b) submit such accounts as the Court of Wards may direct;

(c) pay the balances due from him thereon;

(d) continue liable to account to the Court of Wards after he has ceased to be guardian, for his receipts and disbursements during the period of his guardianship;

(e) apply for the sanction of the Court of Wards to any act which may involve expense not previously sanctioned by it ; and

(f) be entitled to such salary and allowance, to be paid out of the proceeds of the property of the ward, as the Court of Wards thinks fit, in respect of the execution of his duties as such.

38. The Court of Wards may appoint one or more managers for any properties under its superintendence and may control and remove such managers.

Appointment, control
and removal of mana-
gers.

39. A manager appointed by the Court of Wards shall, subject to the supervision and direction of the Court of Wards, and the rules (if any) made, under this Act, in that behalf, have power to collect the rents of the lands placed under his charge as well as all other money due to the ward or person whose property he manages, and to grant receipts therefor ; and he may, subject to the same supervision, direction and rules (if any), grant and renew leases and farms and do all such lawful acts as he may be generally or specially authorised by the Court of Wards to do for the good management of the property

Powers of managers.

40. Every manager appointed by the Court of Wards shall, subject to the supervision and direction of the Court of Wards and to the rules (if any) made, under this Act in that behalf, manage the property or properties placed under his charge diligently and faithfully, and he shall—

Duties and responsi-
bilities of managers.

(a) give such security, if any, as the Court of Wards thinks fit, duly to account for what he may receive in respect of the rents and profits and other income of the property under his charge ;

(b) keep accounts in such form and submit them at such time as the Court of Wards may direct ;

(c) deal with all money received by him in such manner as the Court of Wards may direct ;

(d) apply for the sanction of the Court of Wards to any act which may involve the property in expense not previously sanctioned by it ;

(e) be entitled to such salary or allowance, to be paid out of the proceeds of such property, as the Court of Wards thinks fit, in respect of the execution of duties ;

(f) be responsible for any loss occasioned to the property by his negligence or wilful default ; and

(g) continue liable to account to the Court of Wards after he has ceased to be manager for his receipts and disbursements during the period of his management.

41. The appointment of every guardian and manager appointed under this chapter, shall terminate on the Court of Wards ceasing to exercise superintendence of the person or property in respect of whom or which such guardian or manager, as the case may be, has been appointed.

42. (1) Every guardian and manager appointed under this chapter shall be deemed to be a public servant within the meaning of 'section 13 of the Ranbir Dand Bidhi and for the purposes of that Code.

(2) In the definition of "legal remuneration" contained in 'section 125 of the Ranbir Dand Bidhi the word "Sarkar" shall, for the purposes of this section, be deemed to include the Court of Wards.

43. If no such guardian or manager is appointed by the Court of Wards the Governor of the province or the Wazir Wazarat of the district, specified in the notification under section 9 or any other Governor or Wazir Wazarat whom the Court of Wards may appoint in that behalf, shall be competent to do anything that might be lawfully done by a guardian of the person or a manager of the property appointed under this chapter.

CHAPTER VIII.

RELEASE OF PERSONS AND PROPERTIES FROM SUPERINTENDENCE.

44. The Court of Wards may, at any time, release any person or property, or both, from its superintendence.

Provided that the property of a land-holder, who has been made a ward in accordance with an order made under section 5 shall not be released from the superintendence of the Court of Wards without the previous sanction of ³[the Government].

Provided, further, that person or property, under the charge of the Court of Wards in accordance with the provisions of sub-section (2) of section 7, shall not be released without the concurrence of the Court which appointed or declared the Governor or the Wazir Wazarat to be guardian of the person or property, or both, of the person concerned, under the State Guardians and Wards Act.

¹Section 21, Ranbir Penal Code

²Section 161, Ranbir Penal Code

³See footnote under section 4.

Word used is "Government"

45. (1) Whenever a ward dies or ceases to be under any legal incapacity, and his property is, at the time of his death or cessation of incapacity, still encumbered with debts and liabilities, the Court of Wards may either release such property or, with the sanction of '[the Government]' retain it or any part thereof under its superintendence until such debts and liabilities have been discharged.

(2) In any case provided for in sub-section (1) the Court of Wards may together with the property of any such ward also retain, until the said debts and liabilities have been discharged, the property of which it has assumed the superintendence under section 8.

46. If in the case of any property, there are more proprietors than one, the Court of Wards may retain the whole property under its superintendence if one or more of the proprietors remain wards, although other or others may have ceased to be under any legal incapacity:

Provided that in such cases a proprietor who has ceased to be disqualified shall not, after the cessation of such disqualification, be deemed to be a ward for the purposes of this Act and the Court of Wards shall pay to such proprietors the surplus income accruing from his share of the joint property.

47. (1) When the Court of Wards decides to release from its superintendence the person or property, or both, of any minor, it may, before such release, by an order in writing, appoint any person to be the guardian of the person or property, or both, of such minor.

(2) Such appointment shall take effect from the date of such release.

(3) In appointing a guardian under this section the Court of Wards shall be guided by the provisions of section 17 of the State Guardians and Wards Act, and in every such case the Governor of the province or the Wazir Wazarrt of the district, specified in the order of assumption in the notification under section 9, shall have the powers conferred upon a Governor or Wazir Wazarat under section 35 (2).

(4) Every such guardian shall have and be subject to the same rights, duties and liabilities as if he had been appointed under the State Guardians and Wards Act.

¹See footnote under section 4.

48. Whenever, in the event of the death of any person of whose property the Court of Wards has assumed superintendence, the succession to his property, or any part thereof, is unclaimed or disputed, the Court of Wards may either direct that the property, or part thereof, be made over to any person entitled to or claiming the same, or may institute a suit of interpleader against the several claimants, or may retain the superintendence thereof until a claimant has, in due course of law, established his title thereto in a competent Court.

49. Whenever the Court of Wards releases the property of any person from its superintendence, it shall deliver to such person, or if it has appointed a guardian under sub-section (1) of section 47, to such guardian all documents of title and all papers and accounts (other than State records) relating to such property.

50. Whenever the Court of Wards releases any person or property from its superintendence, the fact of such release shall be notified in the Government Gazette, and such release shall take effect from the date fixed in this behalf in the notification.

51. Any expense incurred by the Court of Wards on account of any property under its superintendence may, after the release of such property, be recovered as an arrear of land revenue due in respect of such property or any part thereof.

CHAPTER IX.

MISCELLANEOUS PROVISIONS.

52. (1) No suit shall be brought in any Civil Court in respect of the exercise of any discretion conferred by this Act.

(2) No suit shall be brought against any officer of the State or any guardian, manager or servant appointed by, and discharging his duties under, a Court of Wards for any thing done by him in good faith under this Act.

53. Every investigation conducted by a Governor or Wazir Wazarat with reference to any claim preferred before him under chapter VI or chapter VII or to any matter connected with any such claim shall be taken to be a judicial proceeding within the meaning of the ¹Ranbir Dand Bidhi.

54. The Court of Wards may, with the previous sanction of ²[the Government] make rules, consistent with this Act regulating all or any of the following matters, namely:—

(a) the management of properties or of all or any property under the superintendence of the Court of Wards;

(b) the procedure to be observed and the powers to be exercised by all or any persons in all or any proceedings under this Act ; and

(c) generally for the purpose of giving effect to all or any of the provisions of this Act.

NOTIFICATION NO. A-1.

It is hereby notified for the information of State Departments and general public of Jammu and Kashmir State that His Highness the Maharaja Sahib Bahadur has been pleased to order that Gold Ordinance No. III of 1920 issued by the Government of India which is published below, may be adopted and given effect to within the State.

AN ORDINANCE TO DEAL WITH CERTAIN GOLD COINS.

Whereas an emergency has arisen which makes it expedient to declare that the gold coins referred to in section II of the Indian Coinage Act 1906 shall cease to be legal tender and to make other provision in this connection.

Now, therefore, in exercise of the power conferred by section 72 of the Government of India Act 1915, the Governor General is pleased to make and promulgate the following ordinance :—

ORDINANCE No. III OF 1920.

1. This Ordinance may be called the Gold Ordinance, 1920.

Short title.

¹Ranbir Penal Code.

²See footnote under section 4.

³Published in the Government Gazette dated 19th Sawan 1977.

2. Notwithstanding anything contained in section II of the Indian Coinage Act, 1906, the gold coins referred to in that section shall cease to be legal tender in payment or on account:

Gold coin no longer to be legal tender.

Provided if any person within 21 days from the commencement of this ordinance tenders any such coins at an office of a circle of issue established under section 5 of the Indian Paper Currency Act 1910, he shall be entitled on demand to receive Currency Notes of the denominational values prescribed under that Act in exchange therefor at the rate of Rs. 15 for one sovereign.

3. In determining for the purposes of the Indian Paper Currency Act 1910, the value of sovereigns and half sovereigns held in reserve such sovereigns and half sovereigns shall be valued at the rate of 15 rupees for one sovereign.

Value of gold coin for the purposes of the India Paper Currency Act.

SIMLA
21st June 1920

(Sd.) CHELMSFORD,
VICEROY AND GOVERNOR GENERAL.

The above ordinance will have effect in the State from the same date as in British India.

(Sd.) BISHAN DASS,
Revenue Minister, Jammu and Kashmir State.

THE KUTH ACT, 1978.**Act No. 1 of 1978.****CONTENTS.***Preamble.***SECTION.****SECTION.**

- | | |
|---|---|
| 1. Extent, commencement. | 12. Disposal on conclusion of trial for forest offence of produce in respect of which it was committed. |
| 2. Interpretation clause. | |
| 3. Presumption that Kuth is State property. | 13. Procedure when offender not known or cannot be found. |
| 4. Acts prohibited. | 14. Appeals from orders under sections 11, 12, and 13. |
| 5. Penalties for acts in contravention of section 4. | 15. Property when to vest in State. |
| 6. Presumption that unaccounted for Kuth is the Kuth in respect of which offence committed. | 16. Saving of power to release property seized. |
| 7. Power to prevent commission of offence. | 17. Punishment for wrongful seizure. |
| 7-A. The same. | 18. Recovery of money due to State. |
| 8. Power to arrest without warrant. | 19. Operation of other law not barred. |
| 9. Application for confiscation. | 20. Application of Act to other economic plants with sanction of Government. |
| 13. Procedure thereupon. | |
| 11. Confiscation. Kuth, tools etc. when liable to confiscation. | 21. Power to make Rules. |

THE KUTH ACT, 1978.**Act No. 1 of 1978.**

[Sanctioned by His Highness the Maharaja Bahadur vide Chief Minister's letter No. 1109, dated the 4th May 1921.]

Preamble. Whereas it is expedient to provide for the conservation, preservation and protection of the Kuth plant (*Sassurea Lappa*) and its produce

in Jammu and Kashmir State and to guard against illicit cultivation, extraction, possession and export thereof; It is hereby enacted as follows:—

This Act may be called the Jammu and Kashmir State Kuth Act, No. 1 of Samvat 1978. It shall extend to the whole of the territories of the Jammu and Kashmir State with the exception of:—

Extent.

1. Omitted.
2. Poonch Ilaqa.
3. Chenani Jagir.

It shall come into force with effect from the date of publication in the Jammu and Kashmir Government Gazette.

Commencement.

2. In this Act unless there be something repugnant in the subject or context, the expression

Interpretation Clause.

“Kuth” includes the root, stem, leaves, flower and all other parts of the Kuth plant (*Sassurea Lappa*), also all substances manufactured therefrom, and all preparations or admixtures containing Kuth or substances manufactured therefrom ;

“export” means to take out of the Jammu and Kashmir State territories to any place outside such territories ;

“transport” means to remove Kuth from one place to another within the territories of the Jammu and Kashmir State ;

“Magistrate” means any person invested with Magisterial powers under the Code of Criminal Procedure and includes any official or other person specially empowered by [the Government] to try cases under this Act ;

“Kuth offence” means any offence punishable under section 5 of this Act ;

“State territory” means the territory of the Jammu and Kashmir State ;

“Forest officer” includes the Chief Conservator, Conservators, Deputy and Assistant Conservators, Forest Rangers, Foresters, Forest Guards and any persons whom [the Government] or any officer empowered by [the Government] may from time to time appoint by name or as holding an office to carry out all or any of the purposes of the Forest Act ;

“Police officer” means and includes all persons of the Police Department of and above the rank of a constable ;

“Customs and Excise officer” includes the Inspector General, Inspectors, Deputy Inspectors, Assistant Inspectors,

¹In sections 2, 4, 8, 16 and 20 the words “the Government” substituted for “His Highness” or “His Highness the Maharaja Bahadur” vide Act X of 1996 published in the Government Gazette dated 15th Bhadon 1996.

Mahaldars and Jamadars of the Customs and Excise Department ;

¹[Revenue officer] includes Wazirs, Tehsildars, Naib-Tehsildars, Zaildars, Lambardars, Safed Poshes, Girdawars, and Patwaries.

3. All Kuth within the State territory, unless title to it is vested in any person in accordance with any rule made or permission granted under section 4 of this Act, shall be presumed to be the property of the State.

Presumption that Kuth is State property.

4. Except in accordance with rules published with the previous sanction of ²[the Government] in the Jammu and Kashmir Government Gazette, no person shall within the territories of the Jammu and Kashmir State take part in—

Acts prohibited.

- (a) the cultivation of Kuth,
- (b) extraction of Kuth,
- (c) the possession of Kuth,
- (d) the transport of Kuth,
- (e) the export of Kuth,
- (f) the sale of Kuth,
- (g) the manufacture of any substance or preparation containing Kuth.

Nothing in this section shall be deemed to prohibit any act done by permission in writing of the Conservator of Forests or other Forest officer authorised by him in this behalf.

Nothing in this Act to prohibit acts done by permission.

5. (1) Whoever contravenes ³[or abets, or attempts, or connives at the contravention of] the provisions of section 4 of this Act shall, on conviction before a Magistrate, be punished for each such offence with imprisonment of either description for a term which may extend to 2 years or with fine which may extend to Rs. 5,000 or with both.

⁴(2) Whoever having been convicted of an offence punishable under sub-section (1) shall be guilty of any offence punishable under the said sub-section shall be subject for every such subsequent offence to imprisonment of either description for a term which may extend to four years or with fine which may extend to Rs. 10,000 or with both.

Penalties for acts in contravention of section 4.

¹Definition of "Revenue Officer" substituted *vide* Act V of 1988 published in the Government Gazette dated 18th Har 1988.

²See footnote under section 2.

³In section 5(1) words in brackets inserted *vide* Notification 7-L/87 published in the Government Gazette dated 24th Magh 1987.

⁴Section 5(2) added and renumbered *vide* State Council Resolution No. 181, dated 15th April 1926 published in the Government Gazette dated 4th Sawan 1983.

¹(3) If at the time of committing any Kuth offence or with a view to avoid arrest at any time after its commission, the offender uses any deadly weapon, the imprisonment with which he shall be punished may extend to 10 years

(4) Where a fine is imposed the Court may direct the offender to be imprisoned in default of payment of the fine for a term which may extend to one-fourth of maximum imprisonment provided for the offence and such imprisonment shall be in addition to any other imprisonment to which he may have been sentenced.

(5) Offences punishable under sub-section (1) shall be triable by a Magistrate of the 1st or 2nd class and under sub-section (2) or (3) by the Court of Sessions or a Magistrate of the first class.

²(6) All offences under this section shall be non-bailable.

6. In prosecutions under section 5 it shall be presumed until the contrary is proved, that all Kuth for which the accused person is unable to account satisfactorily is Kuth in respect of which he has committed an offence under such section.

Presumption that unaccounted for Kuth is the Kuth in respect of which offence committed.

7. Every Forest officer, Police officer, Customs and Excise officer or Revenue officer shall prevent and may interfere for the purpose of preventing the commission of any Kuth offence.

Power to prevent commission of offence.

³7-A. (1) Any Forest officer or any other officer specially appointed to protect Kuth from being smuggled may, arrest or cause to be arrested,

(a) Any person found taking precautions to conceal his presence within the Kuth area, under circumstances which afford reason to believe that he is taking such precautions with a view to committing an offence under this Act; or

(b) Any person who is by repute a habitual thief of Kuth, or a habitual receiver of stolen Kuth knowing it to be stolen, or who by repute habitually smuggles Kuth.

8. When there is reason to believe that a Kuth offence has been committed, any Forest officer, Police officer, Customs and Excise officer or Revenue officer or other officer authoris-

Power to arrest without warrant.

¹Section 5 (3) substituted *vide* Act VIII of 1988 published in the Government Gazette dated 18th Mar 1988.

²Sub-section (6) of section 5 added *vide* State Council Resolution No. LXVII dated 7th November 1926 published in the Government Gazette dated 13th Poh 1983.

³Section 7-A added *vide* Act VI of 1988 published in the Government Gazette dated 18th Mar 1988.

ed by ¹[the Government] in this behalf may without order from a Magistrate and without a warrant:—

(a) seize any Kuth, together with all deadly weapons, materials, tools, boats, carts and cattle believed to be used in committing any such offence;

(b) detain, search or arrest any person against whom a reasonable suspicion exists of his being concerned in any Kuth offence. Every officer making any arrest under this section shall, without unnecessary delay, take or send the person arrested before the Magistrate having jurisdiction in the case, or to the officer-in-charge of the nearest Police-station;

(c) detain and search in any open place any cart, pack animal or other conveyance which he has reason to believe to be used for carrying Kuth in respect of which a Kuth offence has been committed;

²[(d) enter and search any building, vessel or place in which he has reason to believe Kuth to be unlawfully kept or concealed or in case of resistance to break open any door or remove any other obstacle to such entry.

All warrants issued and all searches made under this section shall be executed or made as the case may be in accordance with the provisions of the Code of Criminal Procedure in force within the state].

9. Every officer seizing any property shall, as soon as may be, make a report of such seizure to the Magistrate having jurisdiction to try offence on account of which the seizure has been made, provided that when the offender is unknown it shall be sufficient if the officer makes as soon as may be a report of the circumstances to his official superior.

10. Upon the receipt of any such report the Magistrate shall with all convenient despatch take such measures as may be necessary, for the arrest and trial of the offender and the disposal of the property according to law.

11. All Kuth in respect of which a Kuth offence has been committed and all deadly weapons, materials, tools, boats, carts and cattle used in committing any Kuth offence shall be liable to confiscation. Such confiscation shall be in addition to any other punishment prescribed for such offence.

Application for confiscation.

Confiscation. Kuth, tools, etc., when liable to confiscation.

¹See footnote under section 2.

²Clause (d) amended, words requiring warrant omitted *vide* Notification No. 7-L/87 published in the Government Gazette dated 24th Magh 1987.

12. When the trial of any Kuth offence is concluded any Kuth in respect of which such offence has been committed shall if it is the property of the State or has been confiscated be taken charge of by a Forest officer and in any other case may be disposed of in such manner as the Court may direct.

13. When the offender is not known, or cannot be found the Magistrate may, if he finds that a Kuth offence has been committed, order the Kuth in respect of which the offence has been committed to be confiscated and taken charge of by Forest officer or to be made over to the person whom the Magistrate deems to be entitled to the same:

Provided that no such order shall be made until the expiration of one month from the date of seizing the Kuth or without hearing the person (if any) claiming any right thereto, and the evidence (if any) which he may produce in support of his claim.

14. The officer who made the seizure under section 8 or any of his officials superiors, or any person claiming to be interested in the property so seized may within one month from the date of any order passed under sections 11, 12 or 13 appeal therefrom to the Court to which orders made by such Magistrate are ordinarily appealable and the order passed on such appeal shall be final.

15. When an order for the confiscation of any property has been passed under section 11 or 13 as the case may be, and the period limited by section 13 for on appeal from such order has elapsed and no such appeal has been preferred, or when on such appeal being preferred, the Appellate Court confirms such order in respect of the whole or a portion of such property, such property or such portion thereof as the case may be shall vest in the State free from all incumbrances.

16. Nothing hereinbefore contained shall be deemed to prevent any officer empowered in this behalf by ¹[the Government] from directing at any time the immediate release of any property seized under section 8.

17. Any officer who vexatiously and unnecessarily seizes any property, detains or searches any person, animal or conveyance, arrests any person, or enters and searches any building, vessel or place, on

¹See footnote under section 8.

the pretence that the Kuth offence has been committed shall be punished with imprisonment which may extend to 6 months or with a fine which extend to Rs. 500 or with both.

18. Any arrears of any sum due on account of royalty or other payment due to the State under this Act or any rule made under this Act may be recovered as if it were an arrear of land revenue.

19. Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act or the rule made under it or from being liable under such other law to any higher punishment or penalty than that provided by the Rules made under this Act provided that no person shall be punished twice for the same offence.

20. With the previous sanction of [the Government] the provisions of this Act may be made applicable by notification in the Jammu and Kashmir Government Gazette to any other economic plant or plants.

21. [The Government] may from time to time, by notification in the Jammu and Kashmir Government Gazette, make rules to prevent the illicit export of Kuth from the State.

REVENUE SECRETARY

*18th May 1940,
6th Jeth 1997.*

'No. 1/F.—Under Section 20 of the Kuth Act, No. 1 of 1978 and with the previous sanction of His Highness' Government, Jammu and Kashmir, it is hereby notified that wherever the word "Kuth" occurs in the above said Act this should be read to mean :—

Kuth (*Saussurea Lappa*).

Morin (*Artemisia maritima*)

Poshkar (*Inula racemosa*) and

Pyrethrum (*Pyrethrum cinerarifolium*).

2. This will cancel Notification No. 43 of 1937.

¹ See footnote under section 2.

² Section 21 added vide Notification No. F/12 dated 5th December 1928 published in the Government Gazette dated 29th Maghar 1985.

³ In section 21 the words "the Government" substituted for the words "With the previous sanction of His Highness the Maharaja Bahadur, the Minister-in-charge of the Forest Department" vide Act X of 1996 published in the Government Gazette dated 15th Bhadon 1996.

⁴ (Published in the Government Gazette dated 13th Jeth 1997.)

THE TENANCY ACT, 1980**Act No. II of 1980.****CONTENTS.****SECTION.****SECTION.****CHAPTER I.****PRELIMINARY.**

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4. Grades of occupancy-tenants.
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12. Illegal ejectment no interruption of continuous possession under this chapter

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Appendix A.

Appendix B.

THE TENANCY ACT, 1980.**Act No. II of 1980.**

[Sanctioned by His Highness the Maharaja Sahib Bahadur in Council under Resolution No. 16, dated the 13th September 1923.]

An Act to consolidate, amend and declare the law relating to the Tenancy of land in the Jammu and Kashmir State.

Whereas it is expedient to consolidate, amend and declare the law relating to the tenancy of land in Jammu and Kashmir State; It is hereby enacted as follows :—

Preamble.

CHAPTER I.**PRELIMINARY.**

1. (1) This Act shall be called the Jammu and Kashmir Tenancy Act, 1980, and shall extend to the whole of the Jammu and Kashmir State ¹[***].

²(2) It shall come into force on and from the 1st of Poh, 1980.

(3) From the date when this Act comes into force all circulars, rules and orders previously issued regarding matters dealt with therein, so far as they may be repugnant to it, shall be considered repealed:

but all orders issued, rights acquired, liabilities incurred, or things done under the circulars, rules and orders hereby repealed shall be deemed to have been respectively issued, incurred or done under this Act.

2. In this Act, unless there is something repugnant in the subject or context,

Definitions.

(1) "land" means land which is not occupied as the site of any building in a town or village, and is occupied or has been let for agricultural purposes or for purposes subservient to agriculture or for pasture, and includes the site of buildings and other structures and trees standing on such land as well

¹Saving clause to sections 1(1) repealed vide Revenue Department Notification No. S-50 published in the Government Gazette dated 20th Bhadon 1987.

²Sections 4 and 5 were enforced in such Tehsils of the Jammu Province as were under Settlement in 1914 or have under Settlement since then, from the 1st October 1914, and elsewhere in the Jammu Province from 1st of Assuj 1980 (vide State Council Resolution No. VII dated the 2nd August 1923 and Notification No. 16 dated the 19th Bhadon 1980).

as areas covered by or fields floating over water, and sites of *jandars* and *gharats*:

Provided that nothing in this Act shall apply to the site of any *Jandar* or *gharat* attached to any canal under the management of the State Department of Public Works, or any distributary thereof:

— (2) “rent” means whatever is payable to a landlord in money, kind or service by a tenant, on account of the use or occupation of land held by him or on account of the use of water for irrigation:

(3) “pay” with its grammatical variations and cognate expressions, includes, when used with reference to rent, “deliver” and “render” with their grammatical variations and cognate expressions:

(4) “arrears of rent” means rent which remains unpaid after the date on which it becomes payable:

(5) “tenant” means a person who holds land, under the State, or under another person, and is, or but for a special contract in that behalf would be, liable to pay rent for that land, to the State or to that person; but it does not include—

(a) an inferior land-holder, or

(b) a person to whom a holding has been transferred, or an estate or holding has been let on farm, for the recovery of an arrear of land revenue, or of a sum recoverable as such, or

(c) a mortgagee of the rights of a land-holder, or

(d) Omitted.

— (6) “landlord” means a person under whom a tenant holds land, and to whom the tenant is, or but for a special contract would be, liable to pay rent for that land:

(7) “tenant” and “landlord” include the predecessors and successors in interest of a tenant and landlord respectively:

— (8) “tenancy” means a parcel or parcels of land held by a tenant of a landlord under one lease or engagement or one set of conditions, but may comprise land held by a tenant partly in right of occupancy and partly without such right:

(9) “improvement” means, with reference to a tenancy, any work which is suitable to the tenancy and consistent with the purpose for which it is held, by which the value of the tenancy has been and continues to be increased, and which, if not executed on the tenancy, is either executed directly for its benefit, or is, after execution, made directly beneficial to it:

EXPLANATION I.—It includes, among other things,—

(a) the construction of tanks, wells, water-channels and

other works for the storage or supply or distribution of water for agricultural purposes ;

(b) the construction of works for the drainage of land or for protection of land against floods or from erosion or other damage by water;

(c) the planting of trees, the reclaiming, clearing, enclosing, levelling and terracing of land for agricultural purposes, and other works of a like nature ;

(d) the erection of buildings on the tenancy, or in its immediate vicinity, elsewhere than on the village site, required for the more convenient or profitable use or cultivation of a tenancy ; and

(e) the renewal or reconstruction of any of the foregoing works, or such alteration therein, or additions thereto, as are not of the nature of mere repairs and as durably increase their value;

but it does not include such clearances, enbankments, levelling, enclosures, temporary wells, and water-channels or other works, or petty alterations or repairs to such works, as are made by tenants in the ordinary course of cultivation and without any special expenditure, or any other benefit accruing to land from the ordinary operation of husbandry ;

EXPLANATION II.—A work which benefits several tenancies may be deemed to be, with respect to each of them, an improvement ;

EXPLANATION III.—Unless made with the written consent of the landlord, any work that substantially diminishes the value of any other part of the landlord's property, is not an improvement :

(10) "estate," "land-holder," "[* * *], "holding," "land revenue," "arrear of land revenue," "defaulter" "rates and cesses," "village-cesses," "village-officer," "revenue-officer," "~~muafidar~~," "agricultural year," "notification," "encumbrance," and "date of regular Settlement" have the meanings assigned to those words in ¹[the Jammu and Kashmir Land Revenue Regulation, 1980] ;

(11) "land revenue" means land revenue assessed, or assessable, under any law or orders for the time being in force, whether payable to the State or assigned by the State to other person ; also any sum payable in respect of land, by way of quit-rent or of commutation for service, to the State or to a person to whom the State has assigned the right to

¹Words "Asami or malguzar" in clause (10) deleted *vide* Act I of 1995 published in the Government Gazette dated 20th Jeth 1995 and word [Chakdar] deleted *vide* Act XIII of 1996 published in the Government Gazette dated 5th Assuj 1996.

²Land Revenue Act XII of 1996.

receive the payment :

it also includes any rate imposed in respect of the increased value of land due to irrigation, but does not include any fluctuating *abiana* imposed in addition to the fixed assessment on account of crops matured by means of irrigation, except in so far as such *abiana* may be declared by notification issued by His Highness' Government Jammu and Kashmir in that behalf, to be a rate imposed in respect of the increased value of the land due to irrigation.

CHAPTER II.

RIGHT OF OCCUPANCY.

Part I.—Provisions applicable to the Jammu Province.

Grades of occupancy-
tenants.

3. (1) There shall be the following grades of occupancy-tenants:—

(a) occupancy-tenants of grade A, holding land direct from a land-holder, or from the State ;

(b) occupancy-tenants of grade B, holding land from occupancy-tenants of grade A.

(2) No tenant holding land from an occupancy-tenant of grade B shall be entitled to a right of occupancy :

Provided that any person recorded in a record-of-rights, sanctioned before the date on which this Act comes into force, as possessing a right of occupancy subordinate to a tenant of grade B shall, until the next general re-assessment of the district or tehsil in which the tenancy is situate, retain such right of occupancy, and shall, as far as may be, be subject to all the provisions of this Act relating to occupancy-tenants :

Provided further that, at the next general re-assessment of the tract in which the tenancy is situate, the right and liabilities, to which such tenants shall be subject after the date of the re-assessment, shall be determined by rules to be issued in this behalf by the '[Government].

4. At the next Regular Settlement made in any tract after the date on which this Act comes into force, the classification of occupancy-tenant in force at that date as described in part I of Appendix A of this Act, shall be revised, in every estate, by a Revenue officer not below the rank of Tehsildar, and all tenants already recorded as possessing a right of

¹In section 3(2) "Government" substituted for "Revenue Member with the sanction of His Highness the Maharaja Sahib Bahadur-in-Council" vide Act XIII of 1996 published in the Government Gazette dated 5th Aaruj 1996.

occupancy shall be assigned according to the length of their respective tenancies to one of the following classes, namely:—

CLASS 1.—Tenants whose possession of their tenancies began in or before the Samvat year 1928.

CLASS 2.—Tenants whose possession began after the Samvat year 1928, but not later than the Samvat year 1935;

CLASS 3.—Tenants whose possession began after the Samvat year 1935, but not later than the Samvat year 1950.

CLASS 4.—Tenants whose possession began after the Samvat year 1950.

Tenants of grade B, as described in section 3 of this Act, shall be recorded as such, under the appropriate clause of this section.

5. (1) On the application of the tenant, and with the consent of the landlord or on suit preferred before a competent Revenue Court, notwithstanding anything to the contrary in the Tenancy Rules heretofore in force, a tenant—

Tenants who may be declared occupancy-tenants on suit or otherwise.

(a) who was in possession of land in the Samvat year 1935, or

(b) who owned land and has ceased to be landowner thereof (otherwise than by forfeiture to the State for disloyalty, or by the order of Criminal Court, or by any voluntary act), or

(c) who is an *Udharach* tenant in the Kathua district and was recorded as tenant of any land at the first Regular Settlement, or

(d) who at the first Regular Settlement was entitled to a right of occupancy in any land under the rules or orders at that time in force, but was erroneously recorded as tenant-at-will,

may be declared to be an occupancy tenant thereof of the appropriate class under section 4 of this Act:

Provided in the case of a suit under this sub-section that such tenant has since held continuous possession of the land up to one year before the date on which the suit is instituted.

(2) Except as provided in sub-section (1) of this section nothing in the foregoing section of this Act shall be deemed to confer on a tenant a right of occupancy to which such tenant was not entitled under the Tenancy Rules heretofore in force.

(3) On the application of the landlord or of the tenant, a tenant on whom the landlord, with the permission in writing of a Revenue officer duly empowered in this behalf,

has voluntarily agreed, or agrees, to confer a right of occupancy, shall be declared to be occupancy-tenant thereof of class 4 under section 4 of this Act :

¹[* * *].

*Part II.—Provisions applicable to Kashmir Province,
Ladakh District and Gilgit District.*

6. The tenants entitled to a right of occupancy under any rules or orders in force at the date on which this Act takes effect, as described in part II of Appendix A of this Act, and tenants who may hereafter become entitled to such right, shall be recorded as *kashthkar mustaqil* of one of the following classes namely :—

In the Province of Kashmir.

CLASS 1.—Tenants whose possession of their tenancies began in or before the Samvat year 1937.

CLASS 2.—Tenants whose possession began after the Samvat year 1937, but not later than the Sambat year 1951.

CLASS 3.—Tenants whose possession began after the Sambat year 1951, but not later than the Samvat year 1963. ✓

CLASS 4.—Tenants whose possession began after the Samvat year 1963.

Provided that in the twelve districts of the city of Srinagar, namely :—

Narsinghgarh,
Habakadal,
Maharaj Ranbirganj,
Tashawan,
Khanayar,
Rainawari,
Nawakadal,
Mahisum,
Kothi Bagh,
Chattabal,
Sangin Darwaza,
Nauhatta,

²[* * *] no tenant shall enjoy a right of occupancy under this Act, unless such tenant on or before the 8th day of Katik,

¹In section 5, sub-section (3), proviso omitted vide Act XIII of 1996 published in the Government Gazette dated 5th Assuj 1996.

²In section 6 class 4 following words "notwithstanding anything to the contrary in the Tenancy Rules heretofore in force" deleted vide Act XIII of 1996 published in the Government Gazette dated 5th Assuj 1996.

1975,—

(a) had been recorded as, or had been declared to be, an occupancy-tenant, or

(b) having instituted a suit for a right of occupancy, or in a suit pending at that date having claimed such right, is declared by a competent Court to be an occupancy-tenant, or unless

(c) the landlord of the tenancy consents to the tenant receiving a right of occupancy.

In the Districts of Ladakh and Gilgit.

CLASS 1.—Tenants whose possession of their tenancies began in or before the Samvat year 1942.

CLASS 2.—Tenants whose possession began after the Samvat year 1942, but not later than the Samvat year 1951.

CLASS 3.—Tenants whose possession began after the Samvat year 1951, but not later than the Samvat year 1965.

CLASS 4.—Tenants whose possession began after the Samvat year 1965.

7. (1) At the next Regular Settlement made in any tract, after the date on which this Act comes into force, a Revenue officer not below the rank of Tehsildar shall make enquiry in every estate regarding the status of all tenants holding land therein.

Enquiry regarding the rights of tenants at next Regular Settlement.

(2) The Revenue officer shall, by his order, determine the tenants, who are entitled to a right of occupancy, and shall direct the entry of every tenant so entitled under the appropriate class of section 6 of this Act.

Part III.—Provisions applicable to all districts.

8. Except as provided in section 5 of this Act, a tenant, who, at the date of the first Regular Settlement of the tract in which the tenancy is situated was not entitled under this Act to a right of occupancy as regards such tenancy, shall not subsequently acquire such right by mere length of possession.

Right of occupancy not to be acquired after completion of 1st Regular Settlement by mere length of occupancy.

9. Nothing contained in this Act shall preclude any person from establishing a right of occupancy on any ground other than the grounds specified in the foregoing sections.

Establishment of right of occupancy in virtue of local custom or usage, or otherwise.

10. A right of occupancy may be possessed by tenants under this Act in respect of areas of waste land :

Occupancy right may be possessed in waste land.

Provided that no such right shall be acquired in respect of grazing grounds included in the area of any State forest, *dhars*, or other public grazing ground.

11. Tenancies interrupted by ejectment contrary to the provisions of this Act or by refusal on the part of the landlord to allow re-entry of a tenant entitled to possession, shall be held for the purposes of this chapter to be continuous.

Illegal ejectment, no interruption of continuous possession under this chapter.

12. Exchanges by tenants, whether voluntary or otherwise, and

alterations in the site of a *jandar* or *gharat* owing to a change in the course of a stream,

shall not be deemed to be breaches of continuous possession for the purposes of this chapter :

Provided that a tenant shall not be entitled to a right of occupancy in the land relinquished by him owing to such exchange or alteration of site.

Exclusion of certain classes of occupiers from acquisition of occupancy-right.

13. Nothing contained in this Act shall be deemed to confer a right of occupancy on :—

(a) a village menial, in respect of land held by him solely in remuneration for the customary services rendered by him to the village community ;

(b) the menial servant of a Jagirdar, in respect of land held by such servant solely in remuneration for services rendered by him to such Jagirdar ;

(c) the attendant of any shrine or religious institution, in respect of land held by him from such shrine or institution in consideration of his services rendered thereto ;

(d) hired labourers, who are paid by the landholder for their labour either in cash or in kind or both, or by a share of the produce of the land cultivated by them in respect of such land ;

(e) tenants cultivating land in gardens or orchards, in respect of such land ;

¹[(f) chowkidars of the Forest Rest Houses cultivating land within the demarcated forest boundry in lieu of or in addition to the monthly salary for service rendered to the department.]

14. No co-sharer in the village common land, or in any joint-holding, shall acquire a right of occupancy in land comprised in such village common or joint-holding as against the

Exclusion of co-sharer in joint-holding from acquisition of right of occupancy.

¹Clause (f) to section 13 added vide Act VII of 1991 published in the Government Gazette dated 29th Bhadon 1991.

other co-sharers therein.

15. No person shall be competent to acquire in a tenancy a right of occupancy, not previously subsisting therein, when and so long as the rights of the landlord in regard to such tenancy are mortgaged, with possession, by the landlord to any other person, or the land is leased to a *mustajir*:

Right of occupancy not to accrue in land leased to a *mustajir*.

CHAPTER III.

R E N T.

Rents generally.

16. (1) The rent for the time being payable in respect of a tenancy shall be the first charge on the produce thereof.

Respective rights of landlord and tenant to produce.

(2) A tenant shall be entitled to tend, cut, and harvest the produce of his tenancy in due course of husbandry, without any interference on the part of his landlord.

(3) Except where rent is taken by division of the produce, the tenant shall be entitled to the exclusive possession of the produce.

(4) Where rent is taken by division of the produce—

(a) the tenant shall be entitled to the exclusive possession of the whole produce until it is divided ;

(b) the landlord shall be entitled to be present at, and take part in, the division of the produce ; and

(c) when the produce has been divided, the landlord shall be entitled to the possession of his share thereof.

17. (1) Where rent is taken by any of the following methods, namely :—

Commutation and alteration of rent.

(a) by division or appraisment of the produce,

(b) by rates fixed with reference to the nature of the crops grown,

(c) by a rate on a recognized measure of area,

(d) by a rent in gross on the tenancy, or

(e) partly by one of the methods specified in clauses (a), (b) and (c) of this sub-section and partly by another or others of them,

one of those methods shall not be commuted in whole or in part into another without the consent of both landlord and tenant.

(2) In the absence of a contract or a decree or order of competent authority to the contrary, a tenant, whose rent is taken by any of the methods specified in sub-section (1), shall not be liable to pay for a tenancy rent at any higher rate, or of a higher amount, as the case may be, than the rate or amount payable in respect of the tenancy for the last preceding agricultural year in which rent was payable for the tenancy.

18. Any person in possession of land occupied without the consent of the landlord shall be liable to pay for the use or occupation of that land at the rate of rent payable in the preceding agricultural year, or if rent was not payable in that year, at such rate as the Court may determine to be fair and equitable.

19. When two or more persons are landlords of a tenant in respect of the same tenancy, the tenant shall not be bound to pay part of the rent of his tenancy to one of those persons and part to another.

Produce Rent.

20. Where rent is taken by division or appraisalment of the produce, if the tenant removes any portion of the produce at such a time or in such a manner as to prevent the due division or appraisalment thereof, or deals therewith in a manner contrary to established usage, the produce may be deemed to have been as full as the fullest crop of the same description on similar land in the neighbourhood for that harvest.

21. Where rent is taken by appraisalment of produce—
 (1) if the landlord fails to attend either personally or by agent, at the proper time for making the appraisalment, the tenant may give him, or his accredited agent, notice, orally or in writing, to attend within three days in order to make the appraisalment :

(2) if the landlord, or his agent, notwithstanding the receipt of such notice, neglects to attend within three days of its receipt, the tenant shall be entitled to cut and harvest the produce of his tenancy, and shall be entitled to exclusive possession of the whole produce until it is divided :

(3) when the produce of a tenancy has been cut under sub-section (2) the landlord shall take the rent for that harvest by division of the actual produce, and not by appraisalment.

22. Where rent is taken by appraisement of the produce—

Where rent is taken by appraisement, power of landlord or tenant to require division of actual produce, and of Revenue officer to control appraisement.

(1) if the landlord, or the tenant, does not agree to the amount fixed by appraisement at any harvest, he may require that the rent shall be taken for that harvest by division of the actual produce, and not by appraisement; and may, if the other party neglects or refuses to make such division,

apply to ¹[an Assistant Collector of the second class] for the appointment of a referee under section 23 of this Act;

(2) a Revenue officer not below the rank of ²[Assistant Collector of the second class], for reasons to be recorded by him may, of his own motion, order the appointment of a referee to make the appraisement under section 24 of this Act, or may require the appraisement to be made in his own presence;

(3) a Revenue officer issuing an order under sub-section (2) shall cause notice to be issued to the landlord and the tenant not to proceed with the appraisement, except in his presence, or in the presence of the referee, as the case may be;

(4) any person failing to comply with a notice or order issued to him under sub-sections (2) and (3) of this section shall be liable by the order of the ³[Tehsildar] to a fine not exceeding fifty rupees, in respect of each tenancy to which such notice or order related.

23. If either the landlord or the tenant neglects to attend,

Appointment of referee for division or appraisement.

either personally or by agents, at the proper time for making the division or appraisement of the produce, or if there

is a dispute about the division or appraisement, ¹[an Assistant Collector of the second class] may, on the application of either party, appoint such person as he thinks fit to be a referee to divide or appraise the produce.

24. (1) When a Revenue officer appoints a referee under

Appointment of assessors and procedure of referee.

the last foregoing section he may, in his discretion, give him instructions with respect to the association with himself of

any other persons as assessors, the number, qualifications, and selections of those assessors, and the procedure to be followed in making the division or appraisement.

¹In sections 22(1), 23, 37(b), 41(2) and 48 "Assistant Collector of the second class" substituted for the words "Revenue Officer" vide Act XIII of 1996 published in the Government Gazette dated 5th Assuj 1996.

²In section 22(2) words in brackets substituted for "Wazir Wazarat or Assistant Settlement Officer" vide Act XIII of 1996 published in the Government Gazette dated 5th Assuj 1996.

³In section 22(4) "Tehsildar" substituted for "Wazir Wazarat or Assistant Settlement Officer" vide Act XIII of 1996 published in the Government Gazette dated 5th Assuj 1996.

(2) The referee so appointed shall make the division or appraisement, in accordance with any instructions which he may have received from the Revenue officer under the last foregoing sub-section.

(3) Before making the division or appraisement the referee shall give notice to the landlord and the tenant of the time and place at which the division or appraisement will be made, but, if either the landlord or the tenant fails to attend either personally or by agent, the referee may proceed *ex parte*.

(4) For the purpose of making the division or appraisement, the referee with his assessors, if any, may enter upon any land on which or into any building in which the produce is.

25. (1) In the case of a division of the produce, if the parties agree to the award, the division shall be made accordingly. If the parties do not agree to such division, and all cases in which the rent is payable by appraisement, the referee shall make an estimate of the value of the produce, and shall submit the record with a report of his proceedings to the Revenue officer.

(2) The Revenue officer shall consider the record, and, after such further enquiry, if any as may deem necessary, shall make an order either confirming or varying the division or appraisement.

(3) The Revenue officer shall also make such order as to the cost of the reference as he thinks fit.

(4) The cost may include the remuneration of the referee and of the assessors, if any, and may be levied from the applicant before the appointment of the referee, subject to the adjustment at the close of proceedings.

Provision relating to suits for enhancement or reduction of rent, and proceedings for adjustment of rents on alteration of land revenue.

26. (1) The rent of an occupancy-tenant shall be liable to enhancement or abatement only—

Regulations of enhancements and abatements.

(a) by registered agreement, or

(b) by decree or order of a Revenue Court,

and, when so enhanced or abated, shall not again be liable to enhancement or abatement except on the grounds specified in clauses (b) and (c) of section 27 or in section 29, until or unless—

(i) ten years or such longer period as may have been agreed upon, decreed or ordered since rent was commuted under section 17, has elapsed, or

(ii) the estate in which the tenancy is situated has come under revision of assessment.

(2) Where the rent has been varied merely on the ground of any increase or decrease in area under clause (c) of section 27 or clause (b) in section 29, such variation shall not be considered in computing the period of ten years.

(3) The term for which the rent of an occupancy-tenant is fixed by decree or order of a Revenue Court shall not be less than ten years, but no term in excess of ten years shall be so fixed, except upon agreement by the parties.

27. The landlord of an occupancy-tenant may sue for ^{Enhancement of rent of occupancy-tenants.} enhancement of rent on one or more of the following grounds and no others:—

(a) that the rate of rent paid by such tenant is below the prevailing rate paid by the occupancy-tenants of the same class for land of similar quality and with similar advantages in the neighbourhood ; or

(b) that the productive powers of the land held by the tenant have been increased by an improvement effected during the currency of the present rent, otherwise than by the agency or at the expense of the tenant ; or

(c) that the area of the tenancy has been increased by alluvion, or by the tenant's encroachments :

Provided that the rent of an occupancy-tenant of the description mentioned in section 28 of this Act shall not be enhanced under this section.

28. (1) Where a tenant having a right of occupancy pays his rent entirely by a cash rate consisting of the whole or a share of the land revenue of the tenancy with or without an addition in cash proportionate to the amount of such land revenue, that rent may be enhanced on the ground that deduction therefrom of the land revenue with rates and cesses chargeable on the tenancy, it is—

(i) in the case of tenants of class 1 of section 4 and 6 less than two annas per rupee of the amount of the land revenue ; or

(ii) in the case of tenants of class 2 of sections 4 or 6 less than four annas per rupee of the amount of the land revenue ; or

(iii) in the case of tenants of clause 3 of sections 4 and 6 less than six annas per rupee of the amount of the land revenue ; or

(iv) in the case of tenants of clause 4 of sections 4 and 6 less than eight annas per rupee of the amount of land revenue :

Provided that in the Tehsils of Samba and Ranbirsinghpura, and in any other local areas to which this proviso may

hereafter be extended by the order of His Highness' Government Jammu and Kashmir the rates specified in clauses (i) and (ii) of this sub-section may be increased to amounts not exceeding four and five annas respectively per rupee of the land revenue.

(2) In the case specified in sub-section (1) of this section, the rent payable by an occupancy-tenant of grade B may also be enhanced on the ground that after deduction therefrom of the rent payable by the tenant of the grade A to the land-holder, it is less than two annas per rupee of the amount of the land revenue, or exceeds, by less than 2 annas per rupee of the land revenue, the rent which would have been payable if the tenant had been a tenant of the same class of grade A.

(3) In cases to which sub-sections (1) and (2) apply, the rent may be enhanced to an amount not exceeding two, five, six, or eight annas per rupee of the amount of the land revenue of the tenancy, as the case may be, in addition to the amount of the land revenue of the tenancy and the rates and cesses chargeable thereon.

(4) The rent of an occupancy tenant may be fixed or enhanced with regard to the provisions of this section in any of the proceedings hereinafter mentioned, and not otherwise—

(a) on suit for enhancement of rent by the landlord of the tenancy, or

(b) on the application of either the landlord or the tenant, in a suit by a tenant to contest his liability to ejectment and to be declared to be an occupancy-tenant under sub-sections (4) and (7) of section 50 of the Act, or

(c) on the application of either the landlord or the tenant, in any other suit by a tenant to establish a claim to a right of occupancy, or by a landlord to prove that a tenant has not such a right.

29. An occupancy-tenant may sue for abatement of rent

Abatement of rent of occupancy-tenants. on one or more of the following grounds and on no other:—

(a) that the productive powers of land held by the tenant have been decreased by any cause beyond his control during the currency of the present rent; or

(b) that the area of his tenancy has been decreased by diluvion or by encroachments, or by the taking up of the land for a public purpose, or for a work of public utility.

30. In enhancing or regarding the rent of any land, un-

Discretion as to extent of enhancement or reduction.

der the foregoing provision of this chapter, the Court shall, within the limits prescribed by those provisions, enhance or reduce the

rent to such an amount as it considers fair and equitable but shall not, in any case, fix the rent at a sum less than the amount of the land revenue of the land and the rates and cesses chargeable thereon.

31. (1) Unless the Court decreeing an enhancement of rent otherwise directs, the enhancement shall take effect from the commencement of the agricultural year next following the date of the decree.

(2) A Court decreeing a reduction of rent shall specify in the decree the date on and from which the reduction is to take effect.

32. (2) Where the rent of a tenancy is the whole or a share of the land revenue thereof, with or without any addition in money, kind, or service, and the land revenue of the holding in which the tenancy is situate is altered, a Revenue officer having authority to determine the land revenue payable in respect of the several holdings comprised in the estate in which the tenancy is situated shall determine, also the amount of the land revenue of the tenancy or proportionate share thereof, payable by the tenant as rent.

(2) Where an addition referred to in sub-section (1) is a percentage fixed with reference to the land revenue of the tenancy or the whole or a share of the rates and cesses chargeable thereon, or both, the Revenue officer shall, in like manner, from time to time, alter the amount of the addition in proportion to any alteration of such land revenue or rates and cesses.

(3) The sum or sums determined under the foregoing sub-section, together with any other addition previously payable, shall be the rent payable in respect of the tenancy, until there is again an alteration of the land revenue thereof or the rate and cesses chargeable thereon, or until the rent is enhanced by a suit under this Act.

(4) An alteration of rent under this section shall not be deemed an enhancement or reduction of rent within the meaning of this Act.

33. (1) Where the rent of tenancy is neither of the kind described in section 32 nor a share of the gross produce, nor a rent fixed for a term of years, but is a fixed amount in cash or in kind, a Revenue officer having authority to determine the land revenue payable in respect of the several holdings comprised in the estate in which the tenancy is situated, shall enquire into and may by his order revise the amount of such rent.

(2) In revising the rent of a tenancy under sub-section (1) the Revenue officer subject to the general provisions of this

Act, in regard to the enhancement or abatement of rents shall have regard especially to the amount by which the land revenue and cesses assessed on the tenancy has been increased or diminished since the rent is fixed.

34. (1) Where a lease has been granted, or an agreement has been entered into, by a land-holder in fixing for a period exceeding the term for which the land revenue has been assessed, the rent or other sum payable in respect of the land under the lease or agreement, and the term has expired, the lease or agreement shall be voidable—

(a) at the option of the land-holder if the land revenue of the land has been enhanced, and person to whom the lease has been granted, or with whom the agreement has been entered into, refuses to pay such rent or other sum as a Revenue Court, on the suit of the land-holder, determines to be fair and equitable; and

where the relation of landlord and tenant exists between the grantor and grantee of the lease, or between the person who entered into the agreement—

(b) at the option of the tenant if the land revenue of the land has been reduced and the landlord refuses to accept such rent as a Revenue Court, on the suit of the tenant, determines to be fair and equitable.

(2) Any agreement relative to the occupation, rent, profits or produce of any land which has been entered into for the term of the currency of an assessment shall, unless a contrary intention clearly appears in the agreement, or the agreement is terminated by consent of law, continue in force until a revised assessment takes place.

Remissions or Suspensions of Rent.

35. Notwithstanding anything in the foregoing sections of this chapter, if it appears to a Court making a decree for an arrear of rent that the area of a tenancy has been so diminished by diluvion or otherwise, or that the produce thereof has been so diminished by drought, hail, deposit of sand, flood or other like calamity, that the full amount of rent payable by the tenant be equitably decreed, the Court may allow such remission from the rent payable by the tenant as may appear to it to be just.

36. (1) Whenever the payment of the whole or any part of the land revenue payable in respect of any land is remitted or suspended, '[an Assistant Collector of the first class] may, if

¹In section 36(1) words in brackets substituted for the words "a Revenue Officer not below the rank of Wazir Wazarat or Assistant Settlement Officer" vide Act XIII of 1996 published in the Government Gazette dated 5th Assuj 1996.

the rent is payable in cash, or is rent payable in kind of which the amount is fixed, by order, remit or suspend, as the case may be, the payment of the rent of that land to an amount which may bear the same proportion to the whole of the rent payable in respect of the land, as the land revenue of which payment has been remitted or suspended bears to the whole of the land revenue payable in respect of the land :

Provided that in the case of an occupancy-tenant, whose rent is of the nature hereinbefore in this sub-section described, the remission or suspension of the land revenue payable in respect of his land shall in the absence of a written order by a Revenue officer to the contrary, carry with it a proportionate remission or suspension, as the case may be, of his rent.

(2) When the payment of the rent of any land has been suspended under this section it shall remain under suspension until the ¹[Collector] orders the revenue of that land to be realized.

(3) An order passed under sub-section (1) shall not be liable to be contested by suit in any Court.

(4) A suit shall not lie for the recovery of any rent of which the payment has been remitted, or during the period of suspension of any rent of which the payment has been suspended.

(5) Where the payment of rent has been suspended, the period during which the suspension has continued shall be excluded in the computation of the period of limitation prescribed for a suit for the recovery of the rent.

(6) If the landlord collects from a tenant any rent of which the payment has been remitted, or is under suspension, the ²[Assistant Collector of the first class] may recover from landlord the amount or value of the rent so collected, and may also recover by way of penalty a further sum not exceeding such amount or value, and may cause to be refunded to the tenant the amount or value of the rent so collected from him.

(7) The provisions of this section relating to the remission and suspension of the payment of rent may be applied, so far as they can be made applicable, to land of which the land revenue has been released or redeemed, in any case in which, if the land-revenue in respect of the land had not been released or redeemed, the whole or any part of it might, in the opinion of the ²[Assistant collector of the first class], be remitted or suspended under the rules for the time being in force for re-

¹In sections 36(2) and (8) "Collector" substituted for "Governor" *vide* Act XIII of 1996.

²In sections 36(6) and (7), 50(4) and (5), 60(1), 70(1) and (2), 77(1) and 79(b) words "Assistant Collector of the first class" substituted for "Revenue Officer" *vide* Act XIII of 1996 published in the Government Gazette dated 5th Assuj 1996.

gulating the remission and suspension of land revenue.

(8) Any sum of which the recovery is ordered under subsection (6) on account of rent or penalty may be recovered by the ¹[Collector] as if it were an arrear of land revenue.

Deposits.

Power to deposit rent
in certain cases with
Revenue officer.

37. In either of the following cases, namely—

(a) when a landlord refuses to receive, or grant a receipt for any rent payable in money when tendered to him by a tenant;

(b) when a tenant is in doubt as to the person entitled to receive rent payable in money;

the tenant may apply to ²[an Assistant Collector of the second class] for leave to deposit the rent in his office, and the Revenue officer shall receive the deposit if, after examining the applicant, he is satisfied that there is sufficient ground for the application and if the applicant pays the fee, if any, chargeable for the issue of the notice next hereinafter referred to.

38. (1) When a deposit has been so received it shall be deemed to be a payment made by the tenant to his landlord in respect of rent due.

(2) The Revenue officer receiving the deposit shall give notice of the receipt thereof to every person, who, he has reason to believe, claims or is entitled to the deposit, and may pay the amount thereof to any person appearing to him to be entitled thereto or may, if he thinks fit, retain the deposit pending the decision of a competent Court as to the person so entitled.

(3) No suit or other proceeding shall be instituted against the State or any officer of the State, in respect of anything done by a Revenue officer under this section; but nothing in this sub-section shall prevent any person entitled to receive amount of any such deposit from recovering it from a person to whom it has been paid by a Revenue officer.

Recovery of rent from attached produce.

39. (1) If an order is made by any Court for the attachment of the produce of a tenancy or of any part of a tenancy, the landlord may apply to the Revenue officer by whom the attachment is to be made, or has been made, to sell the produce and pay to him out of

¹See footnote under section 36(2).

²See footnote under section 22(1).

the proceeds of the sale thereof the amount or the value of—

(a) any rent which has fallen due to him in respect of tenancy within the year immediately preceeding the application, and

(b) the rent which will be falling due after the harvesting of the produce and is chargeable against it.

(2) The Revenue officer shall give the person at whose instance the attachment was made an opportunity of showing cause why the application of the landlord should not be granted, and, if he finds the landlord's claim to the whole or any part of the rent to be proved, he shall cause the produce, or such portion thereof as he may deem necessary, to be sold, and shall apply the proceeds of the sale, in the first instance, to satisfy the claim.

(3) The finding of the Revenue officer under sub-section (2) shall have the force of a decree in a suit between the landlord and the tenant.

39-A. (1) In case of any general refusal on the part of the tenants of any local area to pay arrears of rent, rates or cesses in cash or kind due by them to their landlords, His Highness the Maharaja Bahadur may, by notification in the Gazette, declare that such arrears may be recovered as arrears of land revenue.

(2) In any local area to which a notification made under sub-section (1) applies, a landlord to whom an arrear of rent, rate or cess in cash or kind is due by a tenant may (notwithstanding anything to the contrary contained in this Act, or any other Regulation for the time being in force), instead of suing for the recovery of the arrear under this Act, apply in writing to the Wazir Wazarat, to realize the same, and the Wazir Wazarat shall, after satisfying himself that the amount claimed is due, proceed to recover such amount with costs and interest as an arrear of land revenue.

(3) The Wazir Wazarat shall not be made a defendant to any suit in respect of an amount for the recovery of which an order has been passed under this section.

(4) No appeal shall lie from an order of a Wazir Wazarat under this section, but nothing herein contained and no order passed under this section shall debar,

(a) a landlord, from maintaining a suit under section 85 of this Act for the recovery of any amount due to him which has not been recovered under this section, or

(b) a person from whom any amount has been recovered under this section, in excess of the amount due from him,

from recovering the said amount under section 85 of this Act.

39-B. (1) When a notification, under the provisions of section 39-A, sub-section 1 of the Tenancy Act, is made applicable to local area and the Wazir Wazarat in charge, on the application of a landlord to whom an arrear of rent, rate or cess in cash or kind is due by a tenant, realizes the amount claimed, he shall also recover along with the sum collected the amount of the court-fees chargeable *ad valorem* under the provisions of the Court Fees Act, on the amount realized by him.

(2) Out of the sum collected by a Wazir Wazarat under the provision of section 39-A of the Tenancy Act there shall be deducted an amount of 2 per cent in case of cash collections, and 2½ per cent. in case of collections in kind on account of the cost of collection. The amount deducted on account of cost of collection will be in addition to the amount of the court-fees recoverable by the Government under the provisions of sub-section (1).

CHAPTER IV.

RELINQUISHMENT ABANDONMENT AND EJECTMENT.

Relinquishment.

40. A tenant holding for a fixed term under a contract or a decree or order of competent authority may relinquish his tenancy without notice at the end of that term.

41. (1) Any other tenant may relinquish his tenancy by giving orally or in writing to his landlord, or to his landlord's agent, on or before the date fixed by Appendix B of this Act, notice of his intention to relinquish the tenancy after the harvesting of the current crop.

(2) The tenant may, instead of, or in addition to, giving the notice in the manner mentioned in sub-section (1), apply to ²[an Assistant Collector of the second class] on or before the date aforesaid to cause the notice to be served on the landlord, and the Revenue officer, on receiving the cost of service from the tenant, shall cause the notice to be served as soon as may be.

(3) If the tenant does not give notice in the manner prescribed in this section, he shall be liable to pay the rent of his

¹Section 39-B added *vide* Act III of 1991 published in the Government Gazette dated 1st Mar 1991.

²See footnote under section. 22 (1).

tenancy for any part of the ensuing agricultural year during which the tenancy is not let by the landlord to some other person, or is not cultivated by the landlord himself.

42. A tenant cannot without the consent of his landlord, Relinquishment of part only of a tenancy. relinquish a part only of his tenancy.

Abandonment.

43. If a tenant having a right of occupancy fails for more than one year without sufficient cause to cultivate his tenancy, either by himself or some other person, and to arrange for payment of the rent thereof as it falls due, the right of occupancy shall be extinguished from the end of that year.

EJECTMENT.

Liability to ejectment.

44. A tenant having a right of occupancy shall be liable to be ejected from his tenancy on any of the following grounds, namely:—

(a) that he has used the land comprised in the tenancy in a manner which renders it unfit for the purposes for which he held it;

(b) where rent is payable in kind, that he has without sufficient cause failed to cultivate that land in the manner or to the extent customary in the locality in which the land is situate;

(c) that a decree for an arrear of rent in respect of the tenancy has been passed against him and remains unsatisfied.

45. A tenant not having a right of occupancy, but holding for a fixed term under a contract or a decree or order of competent authority, shall be liable to be ejected from his tenancy at the expiration of that term, and on any of the following grounds, before the expiration thereof, namely:—

(a) that he has used the land comprised in the tenancy in a manner which renders it unfit for the purposes for which he held it; ✓

(b) where rent is payable in kind, that he has, without sufficient cause, failed to cultivate that land in the manner or to the extent customary in the locality in which the land is situate;

(c) on any ground which would justify ejectment under the contract, decree or order.

46. A tenant who has not a right of occupancy, and does not hold for a fixed term under a contract or decree or order of competent authority, may be ejected at the time specified in Appendix B of this Act.

Procedure on ejectment.

47. A tenant shall not be ejected otherwise than in execution of a decree for ejectment except in the following cases, namely:—

(a) when a decree for an arrear of rent in respect of his tenancy has been passed against him and remains unsatisfied;

(b) when the tenant has not a right of occupancy, and does not hold for a fixed term under a contract, or, a decree, or order of competent authority.

48. In any such case as is mentioned in clause (a) or clause (b) of the last foregoing section, the landlord may apply to the ¹[Assistant Collector of the second class] for ejectment of the tenant in the case mentioned in the former clause, or for the service on the tenant of a notice of ejectment in the case mentioned in the latter clause.

49. (1) On receiving the application in any such case as is mentioned in clause (a) of section 47 the ²[Assistant Collector] shall, after such inquiry with respect to the existence of the arrear as he may deem necessary, cause a notice to be served on the tenant, stating the date of the decree and the amount due thereunder and informing him that if he does not pay that amount to the ²[Assistant Collector] within 30 days from receipt of the notice, he will be ejected from the land.

(2) If the amount is not so paid, the ²[Assistant Collector] shall, subject to the provisions of this Act with respect to the payment of compensation, order the ejectment of the tenant, unless good cause is shown to the contrary.

50. (1) On receiving the application of the landlord in any such case as is mentioned in clause (b) of section 47, the ²[Assistant Collector] shall, if the application is in order and not open to objection on the face of it, cause a notice of ejectment to be served on the tenant.

(2) A notice under sub-section (1) shall be served only between the dates specified in this behalf in Appendix B of this Act.

¹See footnote under section 22 (1).

²In sections 49 and 50 (1) "Assistant Collector" substituted for "Revenue officer" vide Act. XIII of 1996 published in Government Gazette dated 5th Asfuj 1996.

(3) The notice shall specify the name of the landlord on whose application it is issued and describe the land to which it relates, and shall inform the tenant that he must vacate the land before the beginning of the period prescribed for the ejectment of tenants, as specified in Appendix B of this Act, or that, if he intends to contest his liability to ejectment, he must institute a suit for that purpose in ¹[the Court of the Assistant Collector of the first class] within two months from the date of the service of the notice.

(4) The notice shall also inform the tenant that, if he does not intend to contest his liability to be ejected, and he has any claim for compensation on ejectment, he should, within two months of the date of the service of the notice, prefer his claim to the ²[Assistant Collector of the first class] having authority under the next following sub-section to order his ejectment in the circumstances described in that sub-section.

(5) If within two months from the date of the service of the notice the tenant does not institute a suit to contest his liability to be ejected, ²[an Assistant Collector of the first class] on the application of the landlord, shall ³[subject to the payment of such compensation as may be adjudged under sub-section (4)], order the ejectment of the tenant :

Provided that the ²[Assistant Collector of the first class] shall not make the order until he is satisfied that the notice was duly served on the tenant.

(6) If within those two months the tenant institutes a suit to contest his liability to be ejected and fails in the suit, the Court by which the suit is determined shall, by its decree, direct the ejectment of the tenant.

(7) In a suit by a tenant under sub-section (3) to contest his liability to ejectment, the tenant may claim to be declared to be an occupancy-tenant of the tenancy in suit, and, subject to the provisions of section 5 of this Act, such claim shall be heard and determined in such suit.

51. The '[Government]' may make rules prescribing—

Power to make rules.

(a) the form and language of applications and notice under the two last foregoing sections; and

¹In section 53 (3) words in brackets substituted for "a Revenue Court" *vide* Act XIII of 1996.

²See footnote under section 36 (6).

³In section 50(5) words in brackets substituted for words "subject to the provision of this Act with respect to the payment of compensation" *vide* Act XIII of 1996 published in the Government Gazette dated 5th Assuj 1996.

⁴In section 51 "Government" substituted for the words "Revenue Member, subject to the sanction of His Highness the Maharaja Bahadur in Council" *vide* Act XIII of 1996.

(b) the manner in which those applications and notices are to be signed and attested.

52. When a tenancy is held jointly by several landlords,—

Tenant cannot be ejected from part only of a tenancy, or except at the instance of all the landlords.

(a) the tenant shall not be ejected from a part only of the tenancy, being the undivided share of one or more of such landlords; and

(b) he shall not be ejected from such tenancy except at the instance of all the landlords, unless the Revenue officer, or Revenue Court, is satisfied that the landlords applying or suing for ejectment are acting *bona fide* in the interest of the other landlords as well as in their own interest, and that the tenant will not be prejudiced by reason of the proceedings being taken in the absence of such other landlords of the tenancy.

53. A decree or order for the ejectment of a tenant shall be executed only between the dates fixed in this behalf in Appendix B of this Act, unless the Court making the decree or (where the order is made under section 49) the officer making the order, for reasons to be record in the order, otherwise directs.

Time for ejectment.

54. (1) If in a suit for the ejectment of a tenant on the grounds mentioned in clause (a) or (b) of section 44 or 45, it appears to the Court that an award of compensation to the landlord will be sufficient compensation for the loss sustained by him, the Court may, instead of making a decree for the ejectment of the tenant, order him to pay into Court within a period to be fixed in the order, such compensation as the Court thinks fit.

Award of compensation to landlord instead of ejectment.

(2) The Court may, for special reasons to be recorded in its order, from time to time extend the period fixed under sub-section (1).

(3) If within the period fixed under sub-section (1) or (2) the amount is not paid into Court, a decree for the ejectment of the tenant shall be made.

55. (1) Where, at the time of the proposed ejectment of a tenant from any land, his uncut or un-gathered crops are standing on any part thereof, he shall not be ejected from that part until the crops have ripened and he has been allowed a reasonable time to harvest them.

Rights of ejected tenants in respect of crops and land prepared for sowing.

(2) The Court or Revenue officer decreeing or ordering the ejectment of the tenant shall determine any dispute arising in consequence of the provisions of sub-section (1) between the landlord and the tenant or between the landlord and any person entitled to harvest the crops of the tenant, and may in

its or his discretion--

(a) direct that the tenant pay for the longer occupation of the land secured to him under sub-section (1) such rent as may be fair and equitable, or

(b) determine the value of the tenant's uncut and un-gathered crops, and, on payment thereof by the landlord to the Court or Revenue officer, forthwith eject the tenant.

(3) When a tenant, for whose ejectment proceedings have been taken, has, conformably with local usage, prepared for sowing any land comprised in his tenancy, but has not sown or planted crops on that land, he shall be entitled to receive from the landlord before ejectment a fair equivalent in money for the labour and capital expended by him in so preparing the land, and the Court or Revenue officer before which or whom the proceedings are pending shall, on the application of the tenant, determine the sum payable to the tenant under this sub-section and stay his ejectment until that sum has been paid to him. ✓

Relief for wrongful dispossession.

56. (1) In either of the following cases, namely:—

Relief for wrongful dis-
possession or ejectment.

(a) if a tenant has been dispossessed without his consent of his tenancy or any part thereof, otherwise than in execution of a decree or in pursuance of an order under section 49 or section 50, or

(b) if a tenant who, not having instituted a suit under section 50, has been ejected from his tenancy or any part thereof in pursuance of an order under that section, denies his liability to be ejected,

the tenant may, within ¹[one] year from the date of his dispossession or ejectment, institute a suit for recovery of possession or occupancy, or for compensation, or for both. ✓

(2) A tenant who has been dispossessed ¹[* *] and who has not instituted a suit under sub-section (1) within the period prescribed, shall not be entitled thereafter to institute a suit in any Court for the recovery of possession of the tenancy or for other relief for such dispossession or ejectment.

57. (1) During the progress of Settlement operations in any tract to which this section may be extended, by a special order of His Highness' Government Jammu and Kashmir in that

Summary re-ins'tate-
ment at Settlement of
tenant wrongfully ejected.

¹In section 56 (1) "one" substituted for "three" and in sub-section (2) words "or ejected" deleted vide Act XIII of 1996 published in the Government Gazette dated 5th Assaj 1996.

behalf, the tenant may apply to the Settlement Officer for summary re-instatement in any land from which he has been ejected otherwise than in due course of law.

(2) On receipt of such application, the Settlement officer shall make such enquiry as he deems necessary, and, if he is satisfied that the tenant has been illegally ejected, may order his re-instatement.

(3) No such order shall be passed, if it be proved that the wrongful ejectment took place more than '[three] years before the date on which the tenant filed his application under subsection (1).

¹[* *].

(4) Nothing in this section shall be deemed (a) to entitle a tenant, who has failed in a suit for recovery of possession of land, to apply under this section for summary re-instatement in such land, or (b) to deprive a tenant, whose application under this section has been rejected, of his right to institute a suit for recovery of possession or other relief under section 56 of this Act.

58. (1) Any of the dates fixed in Appendix B of this Act may be altered by order of the ²[Government].

Power to alter dates.

(2) Such order shall be published by notification and shall not take effect until the expiration of one year from the date of such publication.

CHAPTER V.

ALIENATION OF, AND SUCCESSION TO, RIGHT OF OCCUPANCY.

Alienation.

³**59.** Omitted.

³**60.** Right of occupancy may be transferred by sale, mortgage or gift, subject to the provisions of Alienation of Land Act and to the following provisions, namely:—

(1) If an occupancy-tenant intends to transfer his right of occupancy, in whole or part, by sale, mortgage or gift, he

¹In section 57(3) "three" substituted for "twelve" and proviso deleted *vide* Act XIII of 1996 published in the Government Gazette dated 5th Assuj 1996.

²In section 58 "Government" substituted for "Revenue Member with the previous sanction of His Highness the Maharaja Sahib Bahadur in Council" *vide* Act XIII of 1996.

³Section 59 omitted and section 60 (as amended by Revenue Department Notification S-38) substituted *vide* Act I of 1995 published in the Government Gazette dated 20th Jeth 1995.

shall apply to ¹[an Assistant Collector of the first class] for permission to proceed with such transfer :

Provided that in the case of occupancy-tenants holding directly under the State, such permission shall not be necessary.

(2) On receipt of such application, ²[the Assistant Collector] shall summon the landlord of the tenancy; and shall enquire whether he desires to purchase the right of occupancy which the tenant intends to transfer.

(3) If the landlord, without good and sufficient reason, fails to attend in obedience to the summons, due service of such summons having been proved to the satisfaction of the ²[Assistant Collector], or if the landlord on attendance declines to purchase the right of occupancy which the tenant intends to transfer, the ²[Assistant Collector] shall, by written order, authorise the tenant to proceed with the transfer.

(4) If the landlord, on appearance before the Revenue officer states that he wishes to purchase the right of occupancy the Revenue officer shall fix the value of the said right.

(5) The landlord shall be deemed to have purchased the said right, if he pays to the tenant through the Revenue officer the value fixed under sub-section (4) within such time as Revenue officer by his order under sub-section (4) appoints in that behalf.

(6) On the value being so paid the right of occupancy shall be extinguished, and the Revenue officer shall, on application being made to him, put the landlord in possession of the tenancy, or part thereof transferred.

(7) If the landlord fails to pay the value fixed within the time appointed, the Revenue officer shall authorise the tenant to proceed with the transfer.

(8) Where there are several landlords of the tenancy, any one or more of them may claim to purchase a right of occupancy under sub-section (4) of this section; and in case of a dispute arising between two or more landlords of a tenancy in proceedings under this section, the Revenue officer shall pass such orders as appear to him to be equitable in regard to the matters in dispute having regard especially to their respective shares in the ownership of the tenancy.

(9) Where two or more landlords of a tenancy desire to exercise a right of purchase under sub-section (4), such landlords shall be jointly and severally responsible for the payment within the time appointed of the whole amount fixed under

¹See footnote under section 36(6).

²In section 60 (2) and (3) "Assistant Collector" substituted for "Revenue Officer" vide Act XII of 1996.

that sub-section.

(10) In case an occupancy-tenant of grade B intends to transfer his right of occupancy, the option of purchasing such right under this section shall be exercised in the first place by occupancy-tenants of grade A to whom the tenant of grade B is subordinate; and in the second place by the superior landlord of the tenancy.]

61. (1) In proceedings under section 60 it shall be open to the landlord, (and in the cases mentioned in sub-section (10) of section 60 it shall be open to the occupancy-tenants of grade A), to show cause for the disallowance of the proposed transfer.

(2) If the [Assistant Collector], after making such enquiry as he thinks necessary, considers that reasonable ground has been shown for disallowing the proposed transfer, he shall pass orders on the application disallowing it.

EXPLANATION.—Among others the fact that a right of occupancy is likely to be extinguished on the death of the existing tenant under sub-section (5) of section 67 of this Act may be a sufficient cause for the disallowance of the transfer under this section.

62. If an occupancy-tenant whose rights are subject to a mortgage dies without heirs entitled to succeed under section 67 of this Act, the right of the mortgagee shall be extinguished.

63. (1) A right of occupancy ²[* *] may be sold in execution of a decree or order of a Court, ²[subject to the provisions of Alienation of Land Act.]

(2) ³[**] Notice of an intended sale of any such right shall be given by the Court to the landlord, and, if at any time before the close of the day on which the sale takes place, the landlord pays to the Court, or to the officer conducting the sale, a deposit of 25 per centum on the highest bid made at the sale, he shall be declared to be the purchaser instead of the person who made that bid:

³[Provided that the landlord pays the balance of the purchase-money within fifteen days of the date on which the sale takes place].

¹In section 61(2) "Assistant Collector" substituted for "Revenue Officer" *vide* Act XIII of 1996.

²In section 63(1) words "in the Jammu Province" deleted and at the end words in brackets added *vide* Act I of 1995 published in the Government Gazette dated 20th Jeth 1995.

³In section 63(2) "but" in the beginning deleted and proviso added *vide* Act XIII of 1996, published in the Government Gazette dated 5th Assuj 1996.

64. (1) When a right of occupancy has been transferred in accordance with the provisions of this Act by sale, gift or usufructuary mortgage to a person other than the landlord, that person shall, in respect of the land in which the right subsists, have the same rights and be subject to the same liabilities, as the tenant, to whom before the right belonged, had and was subject to.

(2) When a right of occupancy has been transferred by sale or gift to a person other than the landlord, the right of the transferee shall devolve on his heirs according to the provisions of section 67 of this Act.

65. (1) A tenant having a right of occupancy in land may, subject to the provisions of this Act and to the conditions of any written contract between him and his landlord, sub-let the land or any part thereof for any term not exceeding six years.

(2) A person, to whom land is sub-let by a tenant having a right of occupancy therein, shall in respect of that land, and so far as regards the landlord, be, jointly with the tenant, subject to all the liabilities of the tenant under this Act.

Irregular transfers.

66. Transfers of occupancy right not made in accordance with the provisions of this Act shall be voidable on suit instituted within six years of the date of the transfer at the instance of the landlord or, in the cases mentioned in sub-section (10) of section 60, at the instance of either of the landlord or of the occupancy-tenant of grade A.

Succession.

67. (1) When a tenant having a right of occupancy in any land dies, the right shall devolve—

(a) on his male lineal descendants, if any, in the male line of decent;

EXPLANATION.—“Male lineal descendant” includes a son formally adopted according to Hindu Law, and in accordance with any regulations in force in the State regarding such adoptions;

(b) failing such male lineal descendants on—

- (i) his widow, or
- (ii) father's widow, or
- (iii) the widow of a male lineal descendant in the

male line of descent, who predeceased the late tenant :

Provided that such widow has not remarried, and further that the right of a female succeeding to a right of occupancy under this clause shall be extinguished when she dies or remarries, or abandons the land, or is under the provisions of this Act ejected therefrom, and

(c) failing such descendants and widows, or, if a female succeeds to the tenancy under clause (b), then when her interest terminates, on his male collateral relatives in the male line of descent from the common ancestor of the deceased tenant and those relatives:

Provided, with respect to clause (c) of this sub-section, in the case of a right of occupancy not held directly from the State, that the common ancestor occupied the land.

(2) As among descendants and collateral relatives claiming under sub-section (1), the right shall, subject to the provisions of that sub-section, devolve as if it were land left by the deceased in the village in which the land subject to the right is situate,

(3) If there be more than one widow entitled to succeed under any one sub-division of clause (b) of sub-section (1), the right of occupancy as among such widows shall be shared by all of them equally, with benefit of '[survivorship], unless an established custom to the contrary be proved to exist.

(4) When a widow succeeds to a right of occupancy ²[and such right is not held directly from the State as landlord in the Jammu Province] she shall not transfer the right by sale gift or mortgage, or by sub-lease for a term exceeding ¹[two years.]

(5) If the deceased tenant has left no such heirs as are mentioned in sub-section (1), or in section 68 of this Act, on whom his right of occupancy may devolve, the right shall be extinguished.

EXCEPTION.—The provisions of this section shall not be applicable to a right of occupancy held by any person professing the Buddhist religion, or held by a member of any tribe, or in any locality, specially exempted therefrom by ¹[the Government] and amongst such persons, or in such tribe or locality the right shall devolve in accordance with the customs in force regarding the devolution of rights in land in the community

¹In section 67(3) "survivorship" substituted for "remaindership", in sub-section (4) "two years" for "one year" and in Exception "Government" substituted for the words "order of His Highness the Maharaja Sahib Bahadur in Council" *vide* Act XIII of 1996 published in the Government Gazette dated 5th Assuj 1996.

²Words in brackets inserted in section 67(4) *vide* Revenue Department Notification No. S-43 dated 12th November 1929 published in the Government Gazette dated 21st Maghar 1986.

or tribe to which the tenant belongs, or in locality in which the tenancy is situate.

68. (1) An appointed heir shall not succeed as such to a right of occupancy without the consent of the landlord.

Succession of appointed heir or CHELA.

EXPLANATION.—"Appointed heir" includes a son informally adopted in accordance with customary law, and it also includes a *Khanadamad*, but it does not include an illegitimate son.

(2) The landlord shall be deemed to have given his consent under sub-section (1) of this section, if the appointed heir continues to hold possession of the tenancy for a period of three years from the date of the death of the deceased tenant with the knowledge of the landlord, and without interference by him.

(3) The *chela* of a celibate *sadhu* or *faqir* shall not succeed to a right of occupancy held by such *sadhu* or *faqir* without the written consent of the landlord.

(4) On the death without heirs entitled to succeed under section 67 of this Act of a *sadhu* or *faqir* who was the manager of a temple, *Khankeh* or other religious institution, a right of occupancy held by such *sadhu* or *faqir* shall devolve on such temple, *Khankeh* or institution, unless the landlord, in a suit preferred before a competent Court, proves that the right of occupancy was held by the deceased *sadhu* or *faqir* personally, and not by him as manager on behalf of such institution.

CHAPTER VI.

DEFINITION OF AREA HELD IN RIGHT OF OCCUPANCY.

69. (1) Where a right of occupancy extends to a part only of a tenancy, either to an undivided share of such tenancy, or to a specified but undefined area included in such tenancy, [an Assistant Collector of the first class], may of his own motion or on the application of either the landlord or the tenant of the tenancy, take action to separate such share or define such area.

(2) Such application shall be deemed to be an application for the partition of land, and the [Assistant Collector] in taking action under sub-section (1) shall be guided, as far as may be, by [any law or rule having the force of law prevailing] at the time regarding such partitions.

¹In section 69(1) words in brackets substituted for the words "a Revenue Officer of a rank not below that of Wazir Wazarat or Assistant Settlement Officer" vide Act XIII of 1996 published in the Government Gazette dated 5th Assuj 1996.

²In section 69(2) for the words "the law or rules in force" the words "any law or rules having the force of law prevailing" substituted and for the words "Revenue officer" the words "Assistant Collector" substituted. vide Act XIII of 1996 published in the Government Gazette dated 5th Assuj 1996.

CHAPTER VII.

IMPROVEMENTS AND COMPENSATION.

Improvements by landlords.

70. (1) Without the previous permission of ¹[an Assistant Collector of the first class] a landlord shall not make an improvement on the tenancy of a tenant having a right of occupancy.

Improvements by landlords on tenancies of occupancy-tenants.

(2) If a landlord desires to make such an improvement, he may apply to the ¹[Assistant Collector of the first class] for permission to make it, and the ¹[Assistant Collector of the first class] shall, before making an order on the application, hear the objection, if any, of the tenant.

(3) In making an order on an application under sub-section (2), the Revenue officer shall be guided by such rules, if any, as the ²[Government may] make in this behalf

Improvements by tenants.

71. A tenant having a right of occupancy is entitled to make improvements on his tenancy.

Title of occupancy-tenant to make improvements.

72. (1) A tenant having a right of occupancy may make improvements on his tenancy with the assent of his landlord.

Title of tenants not having right of occupancy to make improvements.

(2) If any time the question arises whether or not the landlord assented to the making of an improvement by a tenant not having a right of occupancy, the assent may be inferred from circumstances.

73. Improvements made by a tenant before the commencement of this Act shall be deemed to have been in accordance with this Act, unless they were contrary to ³[any law or rules having the force of law] in force at the time, or unless, in the case of a tenant not having a right of occupancy, it is shown that the improvement was made in contravention of a written agreement between him and his landlord.

Improvements made before commencement of this Act.

¹See footnote under section 36(6).

²In section 70 (3) "Government may" substituted for the words "Revenue Member may, with the sanction of His Highness the Maharaja Sahib Bahadur in Council" *vide* Act XIII of 1996 published in the Government Gazette dated 5th Assuj 1996.

³In section 73 words in brackets substituted for the words "the Tenancy Rules" *vide* Act XIII of 1996 published in the Government Gazette dated 5th Assuj 1996.

74. A tenant ejected in execution of a decree, or in pursuance of a notice of ejectment, shall not be entitled to compensation for any improvement begun by him after the institution of the suit, or service of the notice which resulted in his ejectment.

Improvements begun in anticipation of ejectment.

75. If a landlord tenders to a tenant a lease of his tenancy for a term of not less than twenty years from the date of the tender at the rent then paid by the tenant, or at such other rent as may be agreed on, the tender, if accepted by the tenant, shall bar any claim by him to compensation in respect of improvements previously made on the tenancy.

Tender of lease for twenty years to tenant to be a bar to right to compensation.

76. Subject to the foregoing provisions of this chapter, a tenant who has made an improvement on his tenancy in accordance with this Act shall not be ejected, and the rent payable by him shall not be enhanced, until he has received compensation for the improvements.

Liability to pay compensation for improvements to tenant, on ejectment or on enhancement of his rent.

¹[Provided that a chowkidar of a Forest Rest House cultivating land in lieu of or in addition to the monthly salary for his service to the Department shall not be entitled to any compensation on relinquishing the land.]

77. (1) A tenant who has cleared and brought under cultivation waste land in which he has not a right of occupancy shall, if ejected from that land, be entitled to receive from the land-lord as compensation for disturbance, in addition to any compensation for improvements, a sum to be determined by a Revenue Court or ²[an Assistant Collector of the first class] in accordance with the merits of the case, but not exceeding five years' rent of the land:

Compensation for disturbance of clearing tenant.

Provided that a tenant who is a joint owner of land to which this section applies shall not be entitled to compensation for disturbance on ejectment from the land or any part thereof.

(2) If rent has been paid for the land by division or apportionment of the produce, or by rates fixed with reference to the nature of the crops grown, or if no rent, or no rent other than the land revenue of the land and the rates and cesses chargeable thereon has been paid therefor, the compensation may be computed as if double the amount of the land revenue of the land were the annual rent thereof.

¹Proviso to section 76 added vide Act VII of 1991 published in the Government Gazette dated 29th Bhadon 1991.

²See footnote under section 36(6).

Procedure in determining compensation.

78. (1) In every suit by a tenant to contest his liability to ejectment or by a landlord to eject a tenant or to enhance his rent, the Court shall direct the tenant to file a statement of his claim, if any, to compensation for improvements or for disturbance and of the grounds thereof.

(2) If the Court decrees ejectment of the tenant or the enhancement of his rent, it shall determine the amount of compensation, if any, due to the tenant, and shall stay execution of the decree until the landlord pays into Court that amount less any arrears of rent or costs proved to the satisfaction of the Court to be due to him from the tenant.

Determination of compensation by Revenue Court.

79. In either of the following cases, namely:—

(a) when a notice has been served on a tenant under section 49,

(b) when a notice of ejectment has been served on a tenant under section 50 and the tenant has not instituted a suit to contest his liability to be ejected,

the tenant may apply to '[an Assistant Collector of the first class] having authority to order his ejectment under section 49 or section 50, as the case may be, to determine the amount of compensation due to him for improvements or for disturbance, or for both; and the '[Assistant Collector of the first class] shall determine the amount, if any, accordingly, and stay the ejectment of the tenant until the landlord pays to the '[Assistant Collector of the first class] the amount so determined, less any arrears of rent or costs proved to the satisfaction of the '[Assistant Collector of the first class] to be due to the landlord from the tenant.

80. In estimating the compensation to be awarded under this chapter to a tenant for an improvement, the Court or Revenue officer shall have regard to—

(a) the amount by which the value or the produce of the tenancy, or the value of that produce, is increased by the improvement;

(b) the condition of the improvement and the probable duration of its effect;

(c) the labour and capital required for the making of such an improvement;

(d) any reduction or remission of rent or other advantage allowed to the tenant by the landlord in consideration

*See footnote under section 36(6)

of the improvement ; and

(e) in the case of a reclamation, or of the conversion of unirrigated into irrigated land, the length of time during which the tenant has had the benefit of the improvement.

81. (1) The compensation shall be made by payment in money, unless the parties agree that it be made in whole or in part by the grant of a beneficial lease of land or in some other way.

(2) If the parties so agree, the Court or Revenue officer shall make an order accordingly.

Relief in case of ejectment before determination of compensation.

Relief in case of ejectment before determination of compensation.

82. (1) If from any cause the amount of compensation payable to a tenant—
under this chapter for improvement or disturbance, or,
under section 55 for the value of uncut or ungathered crops, or the preparation of land for sowing,
has not been determined before the tenant is ejected, the ejectment shall not be invalidated by reason of the omission ; but the Court or Revenue officer which decreed or who ordered the ejectment may, on application made by the tenant within one year from the date of the ejectment, correct the omission by making in favour of the tenant an order for the payment to him by the landlord of such compensation as the Court or officer may determine the tenant to be entitled to.

¹[No such order shall be operative until the tenant in whose favour the order is made has paid such *ad valorem* court-fee as would be payable on a plaint for a claim of the amount ordered to be paid to the tenant].

(2) An order made under sub-section (1) may be executed in the same manner as a decree for money may be executed by a Revenue Court.

CHAPTER VIII.

JURISDICTION AND PROCEDURE.

Jurisdiction.

83. There shall be the same classes of Revenue officers under this Act as under ²the Jammu and Kashmir Land Revenue Regulation, 1980,

¹Second para to section 82(1) added *vide* Act XIX of 1989 published in the Government Gazette dated 8th Poh 1989.

Land Revenue Act XII of 1996.

and, in the absence of any order of His Highness' Government Jammu and Kashmir to the contrary, a Revenue officer of any class having jurisdiction within any local limits under that Regulation shall be a Revenue officer of the same class having jurisdiction within the same local limits under this Act.

84. The following applications and proceedings shall be disposed of by Revenue officers as such, and no Court shall take cognizance of any matter with respect to which any application or proceeding might be instituted :—

Applications and proceedings cognizable by Revenue officers.

First Group.

(a) applications by a landlord or a tenant for declaration of a right of occupancy under section 5 (1) and (3).

(b) applications under section 22 regarding the division or appraisement of produce ;

(c) proceedings under sections 32 or 33 for adjustment of cash rents ;

(d) proceedings relating to the remission and suspension of rent under section 36. ;

(e) applications under section 48 for ejectment of a tenant, against whom a decree for an arrear of rent has been passed and remains unsatisfied;

(f) applications under section 50 for ejectment of a tenant, on whom a notice of ejectment has been served and who has not instituted a suit to contest his liability to be ejected, but has claimed compensation under section 79 ; and applications by a tenant under section 79 ;

(g) applications under section 57 by a tenant wrongfully dispossessed, for summary re-instatement during Settlement operations;

(h) applications under section 60 (1) for permission to transfer a right of occupancy and all proceedings under that section ;

(i) proceedings under chapter VII with respect to the award of compensation for improvement or disturbance ;

(j) applications under section 62 for extinction of a right of occupancy ;

(k) applications or proceedings under section 69 for definition of a right of occupancy ;

(l) applications by a landlord under section 70 for permission to make an improvement on a tenancy ;

Second Group.

(m) applications under section 23 with respect to the division or appraisement of produce ;

(n) applications under section 50, sub-section (5), for the ejectment of a tenant on whom a notice of ejectment has been served, and who has not instituted a suit to contest his liability to be ejected and has not claimed compensation under section 79 ; ✓

(o) applications under section 55 for the determination—

(i) of the rent payable for land occupied by crops uncut or ungathered at the time of an order being made for the ejectment of a tenant, or

(ii) of the value of such crops or of the sum payable to the tenant for labour and capital expended by him in preparing land for sowing;

Third Group.

(p) applications under section 37 by tenants to deposit rent ;

(q) applications under section 41 for service of notice of relinquishment ;

(r) applications under section 48 for service of notice to ejectment. ✓

(2) Applications under clause (g) of sub-section (1) shall be disposed of by a Settlement Officer. ✓

[(3) A Collector or an Assistant Collector of the first class whether in settlement duty or not may take cognizance and dispose of any of the applications or proceedings mentioned in sub-section (1). ✓ (a to k)

(4) An Assistant Collector of the second class may dispose of any of the application and proceedings mentioned in the second group. ✓

(5) An application or proceeding declared cognizable by an Assistant Collector of the first class shall be filed before the Wazir Wazarat holding charge of a Wazarat. He may either hear it himself or transfer it to an officer subordinate to him exercising the powers of an Assistant Collector of the first class. ✓

(6) An application or proceeding declared cognizable by an Assistant Collector of the second class shall be filed before the Tehsildar who may either hear it himself or transfer it to an officer subordinate to him exercising the powers of an Assistant Collector of the second class.] ✓

85. (1) When a Revenue officer is exercising jurisdiction with respect to any such suit as is described in sub-section (3) of this section or with respect to an appeal or other proceeding arising out of any such suit, he shall be called a Revenue Court.

(2) There shall be the same classes of Revenue Courts as of Revenue officers under this Act, and in the absence of any order of His Highness' Government Jammu and Kashmir to the contrary, a Revenue officer of any class having jurisdiction within any local limits, under this Act, shall be a Revenue Court of the same class having jurisdiction within the same local limits.

(3) The following suits shall be instituted in, and heard and determined by, Revenue Courts, and no other Court shall take cognizance of any dispute or matter with respect to which any such suit might be instituted:—

First Group.

(a) suits by a tenant under section 5 (1) or otherwise, to establish a right of occupancy, or by a landlord to prove that a tenant has not such a right ;

(b) suits between landlord and tenant for enhancement or reduction of rent under section 27, 28 or 29 ;

(c) suits by landlord or tenant to set aside a lease or agreement under section 34 ¹[and suits relating to the rent to be paid under a mortgage made in accordance with form (c) as prescribed by section 8 of the Jammu and Kashmir Alienation of Land Act] ;

(d) suits by landlord to eject the tenant ;

(e) suits by a tenant under section 50 to contest liability to ejectment, when notice of ejectment has been served ;

(f) suits by a tenant under section 56 for recovery of possession or occupancy, or for compensation, or for both ;

(g) suits by a landlord under 66 to set aside a transfer made of a right of occupancy, or to dispossess a person to whom such a transfer has been made, or for both purposes ;

(h) any other suit between landlord and tenant arising out of the lease or conditions on which a tenancy is held ;

(i) suits for sums payable on account of village cesses or village expenses ;

(j) suits by a co-sharer in an estate, holding or tenancy for a share of the profits thereof or for a settlement of accounts ;

(k) suits for the recovery of over-payments of rent, of land revenue, or of any other demand for which a suit lies in a Revenue Court under this sub-section ;

(l) suits relating to the emoluments of zaildars, inamdars, or village-officers ;

¹Words in brackets in section 85(3) (c) added *vide* Act V of 1995 section 27, published in the Government Gazette dated 17th Mar 1995.

Second Group.

(m) suits by a landlord for arrears of rent or the money equivalent of rent, or for sums recoverable under section 18;

(n) suits by a land-owner to recover moneys claimed a due for the enjoyment of rights in or over land or in waters including rights of irrigation, rights over fisheries, rights of, pasturage, and forest rights;

(o) suits for sums payable on account of land revenue or of any other demand recoverable as an arrear of land revenue under any enactment for the time being in force, and by a superior land-owner for other sums due to him as such.

¹[(4) An Assistant Collector of the first class may hear and determine any of the suits mentioned in sub-section 3.] ✓

(5) A Tehsildar may hear and determine any of the suits mentioned in the second group ¹[of sub-section (3),] provided that the value of the subject matter does not exceed Rs. 500; and

(6) a Naib-Tehsildar may hear and determine any of the suits mentioned in the second group ¹[of sub-section (3),] provided that the value of the subject matter does not exceed Rs. 100.

Administrative Control, Appeal, Review and Revision.

86. In regard to all matters relating to:—

<sup>Administrative control
appeal, review and revision.</sup> (a) the general superintendence and control of Revenue officers,

(b) power to distribute business under this Act, and to withdraw cases pending before a Revenue officer or Revenue Court,

(c) appeals from the order or decree of a Revenue officer or a Revenue Court,

(d) limitation of such appeals,

(e) review by a Revenue officer or Revenue Court of an order passed by himself or itself or predecessors in office, and

(f) revision of proceedings, order or decree of a Revenue officer or Revenue Court,

the provisions ²[*] of the ³Jammu and Kashmir Land Revenue Regulation, 1980, shall apply to the proceedings of Revenue officers or Revenue Courts under this Act; ✓

²[Provided that appeals from original and appellate order and decrees of the Collector or the Settlement Officer in suits

¹In section 85, sub-section (4) substituted and in sub-section (5), and (6) words in brackets inserted *vide* Act XIII of 1996 published in the Government Gazette dated 5th Assuj 1996.

²In section 86 words and figures of sections 9, 10, 11, 12, 13, 14, 15 and 16 "deleted and proviso substituted *vide* Act XIII of 1996 published in the Government Gazette dated 5th Assuj 1996. (Clause (iii) to the deleted proviso was added *vide* Revenue Department Notification No. S-37, dated 11th May 1929 published in the Government Gazette dated 10th Jeth 1986.)

³Land Revenue Act XII of 1996.

and appeals mentioned in section 84 and 85 shall lie to the High Court and shall be heard by ¹[a Single Judge] and any further appeal if maintainable under the provisions of Jammu and Kashmir Land Revenue Act, shall be heard by a Bench of two other judges.] ✓

Miscellaneous.

87. The Code of Civil Procedure for the time being in force in the State shall, as far as may be consistent with the provisions of this Act, regulate the proceedings of Revenue Courts in matters under this Act.

88. In regard to the following matters, namely:—

(a) rules relating to the procedure of Revenue officers,
(b) appearances before and applications to Revenue officers and Revenue Courts,

(c) costs,

(d) power of Revenue officers or Revenue Courts to summon persons,

(e) mode of service of summons,

(f) mode of service of notice, order or proclamation,

(g) mode of making proclamation,

(h) place of sitting of Revenue officers or Revenue Courts,

(i) holidays, and

(j) retention of powers by Revenue officers on transfer,

the provisions ²[*] of the ³Jammu and Kashmir Land Revenue Regulation 1980, shall apply to the proceedings of Revenue officers or Revenue Courts under this Act.

89. (1) Any number of tenants cultivating in the same estate may, in the discretion of the Revenue officer or Revenue Court, be made parties to any proceeding under chapter III.

(2) But a decree or order shall not be made in any such proceeding unless the Revenue officer or Revenue Court is satisfied that all the parties thereto have had an opportunity of appearing and being heard.

(3) A decree or order made in any such proceeding shall specify the extent to which each of the tenants is affected thereby.

¹In the proviso to section 86 for the words "the Judge classified as Revenue Commissioner" the words "a single Judge" substituted vide Act XX of 1996, published in Government Gazette dated 5th Phagan, 1996.

²In section 88 the words and figures "of sections 17; 18, 157, 19, 20, 21, 22, 23, 24 and 26" deleted vide Act XIII of 1996 published in the Government Gazette dated 5th Asauj 1996.

³Land Revenue Act XII of 1996

90. (1) When a defendant admits that money is due from him on account of rent, but pleads that it is due not to the plaintiff but to a third person, the Court shall, except for special reasons to be recorded by it, refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

(2) Where such a payment is made, the Court shall forthwith cause notice of the payment to be served on the third person.

(3) Unless the third person, within three months from the receipt of the notice, institutes a suit against the plaintiff, and therein obtains an order restraining payment of the money, it shall be paid to the plaintiff on his application to the Court therefor.

(4) Nothing in this section shall affect the right of any person to recover from the plaintiff money paid to him under sub-section (3).

(5) When a defendant pays money into Court under this section, the Court shall give the defendant a receipt, and the receipt so given shall operate as an acquittance in the same manner and to the same extent as if it had been given by the plaintiff or the third person, as the case may be.

91. A Court passing a decree for an arrear of rent may, on the oral application of the decree-holder, order execution thereof against the movable property of the tenant, and against any uncut or ungathered crops or the tenancy in respect of which the arrear is decreed.

92. A tenant shall not, during the continuance of his occupancy, be liable to imprisonment on the application of his landlord in execution of a decree for an arrear of rent.

93. (1) If in any proceeding pending before a Revenue Court exercising original, appellate, or revisional jurisdiction, it appears to the Court that any question in issue is more proper for decision by a Civil Court, the Revenue Court may, with the previous sanction of the Court, if any, to the control of which it is immediately subject, require, by order in writing, any party to the proceeding to institute, within such time as it may fix in this behalf, a suit in the Civil Court for the purpose of obtaining a decision on the question, and, if he fails to comply with the requisition, may decide the question as it thinks fit.

(2) If the party institutes the suit in compliance with the requisition, the Revenue Court shall dispose of the proceeding

pending before it in accordance with the final decision of the Civil Court of first instance or appeal, as the case may be.

(3) *Mutatis mutandis* the provisions of sub-sections (1) and (2) shall be applicable, if in any proceeding pending before a Civil Court, it appears to the Court that it is necessary to decide any matter, which under the provisions of section 85 (3) of this Act should be heard and determined by a Revenue Court.

94. (1) If any suit, application, or appeal filed in a Civil or Revenue Court, the Court doubts whether such suit, application or appeal should be filed in a Civil or a Revenue Court, it may submit the record, with a statement of the reasons for its doubt through the Courts to which it is subordinate, to the High Court ¹[of Judicature].

(2) If the Court is a Revenue Court subordinate to the ²[Commissioner] no such reference shall be made except with the sanction of the ²[Commissioner] previously obtained.

(3) On any such reference being made, the High Court ¹[of Judicature] may order the Court either to proceed with the cases, or to return the plaint, application, or appeal for presentation to such other Court as it may declare to be competent to try the same.

(4) The order of the High Court ¹[of Judicature] on any such reference shall be final.

Power of High Court of Judicature to validate proceedings under mistake as to jurisdiction.

95. (1) In either of the following cases, namely :—

(a) if it appears to a Civil Court that a Court under its control has determined a suit of a class mentioned in section 85 which under the provisions of that section should have been heard and determined by a Revenue Court, or

(b) if it appears to a Revenue Court that a Court under its control has determined a suit which should have been heard by a Civil Court,

the Civil Court or Revenue Court, as the case may be, shall submit the record of the suit to the High Court ¹[of Judicature]

(2) On the perusal of the record, the High Court ¹[of Judicature] may pass such order as it thinks fit, and may

¹"High Court of Judicature" substituted for "High Court" vide Revenue Department Notification No. S-36 dated 11th May 1929 published in the Government Gazette dated 10th Jeth 1986.

²In section 94(2) "Commissioner" substituted for "Revenue Member" vide Act XIII of 1996 published in the Government Gazette dated 5th Asoj 1996.

direct its order to such Court as it may declare to be competent to determine the suit, or, if it appears to the High Court [of Judicature] that the suit was so determined in good faith, and that the parties have not been prejudiced by the mistake as to jurisdiction, the High Court '[of Judicature]' may order that the decree be registered in the Court which has jurisdiction.

(3) If it appears to the High Court '[of Judicature]' otherwise than on submission of a record under sub-section (1), that Civil Court under its control has determined a suit of a class mentioned in section 85 which under the provision of that section should have been heard and determined by a Revenue Court, the High Court '[of Judicature]' may pass any order which it might have passed if the record had been submitted to it under that sub-section.

(4) With respect to any proceeding subsequent to decree, the High Court '[of Judicature]' may make such order for its registration in a Revenue Court or Civil Court as in the circumstances appears to be just and proper :

(5) An order of the High Court '[of Judicature]' under this section shall be conclusive as against persons who were not parties to the suit or proceeding as well as against persons who were parties thereto, and the decree or proceeding to which the order relates shall have effect as if it had been made or had by the Court in which the order has required it to be registered.

96. ²[The Government may after previous publication make such rules as may be necessary for the purpose or giving effect or carrying out the provisions of this Act and for the guidance of Revenue officers and Courts].

Power to make rules.

CHAPTER IX.

Effect of this Act on Records-of-Rights and Agreement.

Nullity of certain entries in records-of-rights.

97. An entry in any record-of-rights providing—

(a) that a landlord may prevent a tenant from making or eject him for making, such improvements on his tenancy as he is entitled to make under this Act, or

¹"High Court of Judicature" substituted for "High Court" vide Revenue Department Notification No 5-36 dated 11th May, 1929.

²Section 96 substituted vide Act XIII of 1996 published in the Government Gazette dated 9th Assuj 1996.

(b) that a tenant ejected from his tenancy shall not be entitled to compensation for improvements or for disturbance in any case in which he would, under this Act be entitled to compensation thereof, or

(c) that a landlord may eject a tenant otherwise than in accordance with the provisions of this Act, shall be void to that extent.

98. (1) Nothing in any agreement made between a landlord and a tenant after the passing of the Act shall—
Nullity of certain agreements contrary to this Act.

(a) override any of the provisions of this Act with respect to the acquisition of a right of occupancy, or the reduction remission or suspension of rent, or the enhancement of the rent of a tenant having right of occupancy,

(b) take away or limit the right of a tenant as determined by this Act to make improvements, and claim compensation therefor, or, where compensation for disturbance can be claimed under this Act, to claim such compensation, or

(c) entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act.

(2) Nothing in clause (a) of sub-section (1) shall apply to an agreement by which a tenant binds himself to pay an enhanced rent in consideration of an improvement made at the expense of his landlord, and to the benefit of which the tenant is not otherwise entitled.

99. Save as expressly provided in this Act, nothing in this Act shall affect the operation of any agreement between a landlord and a tenant, when the agreement either is in writing or has been recorded in a record-of-rights before the passing of this Act or has been entered by order of a Revenue officer in a record-of-rights or annual record.
Saving of other agreements when in writing

APPENDIX A.

Clause.	Description.	Tehsil or district to which this rule is applicable.	Section of rules or other authority.	Explanation.
Part 1.—Jammu Province.				
(a)	Tenants who settled in the village with the founders thereof, and held continuous possession up to the time of the 1st Regular Settlement.	Kathua and Jasmargarh tehsils, Udbampur and Kisai districts, Badohli tehsil.	Section 1	
(b)	Tenants who at the time of the 1st Regular Settlement had held continuous possession of land for two generations.	Kathua and Jasmargarh tehsils.	1	
(c)	Tenants who were recorded at General Devi Singh Settlement of the Jasrota District in Samvat 1935-1937 as possessing ploughs, and who thereafter held continuous possession upto the time of the 1st Regular Settlement.	Do.	4	
(d)	Tenants who being "Udharach" cultivators had at the time of 1st Regular Settlement held continuous possession for not less than 10 years.	Do.	5	"Udharach" cultivators means tenants who migrate from the Kandi tracts to cultivate lands in the Andhar tracts with ploughs supplied by the

Clause.	Description.	Tahsil or district to which this rule is applicable.	Section of rules or other authority.	Explanation.
(e)	Tenants who, before the date of the 1st Regular Settlement had been declared by judicial decision, or by the order of a competent Revenue officer, or by the order of His Highness the Maharaja Sahib, to be occupancy-tenants.	Jammu and Mirpur districts. Riasi and Udhampur districts and Basohli tehsil.	Section 1 " 1 (a)	landlords and whose cultivating occupancy is ordinarily continuous from year to year, the leader of each party being known as "Hala dar"
(f)	Tenants who, before the date of the 1st Regular Settlement had been declared to be occupancy-tenants by agreement with the landlord.	Jammu and Mirpur district. Riasi and Udhampur districts and Basohli tehsil.	" 1 " 1 (a)	
(g)	Tenants who were recorded as tenants in the Settlement records of Samvat 1966-1928, with or without description of title, and thereafter held continuous possession upto the time of the 1st Settlement.	Jammu and Mirpur districts. Riasi and Udhampur districts and Basohli tehsil	" 2 " 2	

(h) Tenants who held possession in Samvat 1926-1928 but were erroneously omitted from the records of the Settlement of that year, and who thereafter held continuous possession upto the time of the 1st Regular Settlement.	Jammu and Mirpur districts. Riasi and Udhampur districts and Basohli tehsil.	3 3		
(i) Lahridars, who received grants of waste land, whether the property of the State or village common land, and, having reclaimed it at their own expense, held continuous possession upto the time of 1st Regular Settlement; or who, received grants of cultivated land and held continuous possession from the date of the grant until the time of the 1st Regular Settlement.	Jammu and Mirpur districts. Riasi and Udhampur districts and Basohli tehsil.	4 4		‘Lahridar’ means a person in Military employment as sepoy or sowar who received from the State a grant of land prior to the Samvat year 1945, such land remaining free from assessment until the year Samvat 1945.
(j) Manifesters, who at the date of the 1st Regular Settlement, had held continuous possession of land comprised in the Muafi for not less than 25 years without interference by land-holder.	Jammu and Mirpur districts. Riasi and Udhampur districts and Basohli tehsil.	5 5		
(k) Chaudhri Mansabdar, in regard to lands known as Dag Sarkari of which he was placed in possession between the year 1939 and 1946, and of which he remained in cultivating possession at the time of 1st Regular Settlement.	Samba tehsil.	1-2		‘Dag Sarkari’ means land, which having deserted at the famine of 1934, was not allotted to any plough at the Settlement of 1939, and being made over to

Clause.	Description.	Tehsil or district to which this rule is applicable.	Section of rules or other authority.	Explanation.
(l)	Bawaris, who were placed by Chaudhri Mansabdar in possession of Dag Sarkari between the year 1939 and 1946, and who at the time of the 1st Regular Settlement remained in cultivating occupancy thereof.	Samba tehsil.	Section 1-2	Chaudhri Mansabdar, was reclaimed by Bawaris settled by him thereon, or by tenants-at-will under him.
(m)	Tenants who were given land for cultivation on payment of rent, by agreement with the proprietor in Samvat 1934 and who thereafter held continuous possession up to the time of the 1st Regular Settlement provided that there was no contract or agreement debarring them from rights of occupancy in such land.	Jammu tehsil. Akhnur tehsil and Mirpur district. Riasi and Udhampur districts and Basohli tehsil.	6 ,, 6 ,,	
(n)	Tenants who during or shortly after the famine of 1934 were placed in possession of land by any written order or Percha granted by an officer of the State and who thereafter held continuous possession upto the time of the 1st Regular Settlement.	Jammu and Akhnur tehsils and Mirpur district. Riasi and Udhampur districts and Basohli tehsil.	7 ,, 7 ,,	

(o)	In villages which were not previously surveyed or of which no survey files were forthcoming, tenants who cultivated land continuously on behalf of the proprietors or on behalf of the State for 15 years prior to the date of the 1st Regular Settlement.	Jamma and Akhnur tehsils and Mirpur district.	"	8
(p)	In estates of which the proprietary right is vested in the Darbar persons not being assames of malguzars holding directly from the State, and possessing Parchas of the Settlement of Samvat 1926.	Riasi and Udhampur districts and Basohli tehsil.	"	8
(q)	Tenants holding land under persons described in the preceding clause on payment of rent in kind or in cash, and possessing Parchas of the Settlement of Samvat 1926.	Mirpur tehsil.		State Council Resolution dated 30th Baisakh 1955 and section 2 of rules.
(r)	Tenants holding land on payment of rent under the State, who have received a right of occupancy under Ailan No. 4, dated 9th Jeth 1969.	Mirpur tehsil.		State Council Resolution dated 30th Baisakh 1955 and section 2 of rules.
(s)	Tenants who by mutual agreement with the proprietor have been recorded as occupancy-tenants since the completion of the 1st Regular Settlement.	All districts.	"	
(t)	Tenants entitled to a right of occupancy under any of the above clauses, but holding land from occupancy-tenants of a higher grade and not directly from the land-holder.	"	"	

Clause	Description.	Tahsil or district to which this rule is applicable.	Sections of rules or other authority.	Explanation.
Part II.—Kashmir Province and Gilgit and Ladakh Districts.				
(a)	Tenants who at the date of the 1st Regular Settlement had held continuous possession for not less than 12 years.	Muzaffrabad district Ilaqa Mirbehri, tahsil Khas.	1 (a) State Council Resolution dated 9th October 1897.	
		Balti-tan except Zanskar.	3 (a)	
		Ladakh & Zanskar.	ii (c).	
(b)	Tenants who at the date of the 1st Regular Settlement had acquired a right of occupancy by agreement with the landlord, or by the usage, or by the decree of a competent Court.	Muzaffrabad district.	1 (b).	
		Srinagar city.	1 (b).	
		Baltistan except Zanskar.	3 (b).	
		Ladakh & Zanskar.	ii (b).	
(c)	Tenants who were recorded as cultivators of land in the Khatounis prepared in Samvat 1945, or who although not so recorded prove that they were cultivators of land in that year. and who	Srinagar city.	1 (a)	

held continuous possession of such land upto the Samvat year 1956.

(d)

Tenants who were recorded as cultivators of land at the 1st Regular Settlement, and who held possession of such land continuously upto the date of the second Regular Settlement

11 (a)

These parts of the Kashmir valley, including the Niabat of Gurez, of which a 2nd Regular Settlement was completed before the year 1966.

For the purposes of this clause and of clause (e) the records of the 1st Regular Settlement include the annual record prepared in the Samvat year 1951.

(e)

Tenants who having been recorded as cultivators of land at the 1st Regular Settlement, were illegally ejected therefrom before the date of the 2nd Regular Settlement, and having held the land continuously for not less than 10 years at the time of the ejectment were reinstated in possession of their tenancies during the 2nd Regular Settlement.

11 (b).

As clause (d)

See note under clause (d).

(f)

Tenants who at the date of the 2nd Regular Settlement had acquired a right of occupancy by virtue of any lawful agreement or usage.

11 (c).

As clause (d).

(g)

Tenants whose possession began not later than the Samvat year 1957, and who held possession continuously upto the date of the 1st Regular Settlement.

Proposed.

Deohri Khas Jagir estates.

As proposed in Settlement Commissioner's No. 312 dated 21st Baisakh 1916 to Revenue Minister.
The 1st Regular Settlement is that of which the operations began in the year 1971.

Clause.	Description.	Tehsil or district where this rule is applicable.	Section of tenancy rules or other authority.	Explanation.
(h)	Tenants who settled in an estate with the founders thereof.	Baltistan.	3 (a).	
(i)	Tenants who were recorded as cultivators of land of the Settlement of Sambat 1942, and who continuously held possession of such land upto the date of the 1st Regular Settlement.	Ladakh.	ii (a).	
(j)	Tenants whose possession began not later than the Sambat year 1958, and who continuously held possession upto the date of the Second Regular Settlement.	Gilgit District.	Proposed.	As proposed in Settlement Commissioner's No 312, dated 21st Baisakh 1916 to the Revenue Minister.

APPENDIX B.

The dates shown in the following table are prescribed for proceedings under chapter IV of this Act.

1	2	3	4	5	6	7
	Name of district or Naqa.	Latest date for service of notice of relinquishment [section 41 (2)].	Time for service of notice of ejectment [SECTION 50(2)].	Time for ejectment (SECTIONS 46, 50 and 53).		
			Begins	Ends.	Begins.	Ends.
Province.	(a) Mirpur, Bhimber, Akhaur, Jammu, Ranbirsinghpura, Samba, Jasmargarh and Kathua.	15th Phagan ..	1st Assuj ..	1st Maghar..	1st Jeth ..	15th Har.
	(b) Kotli, Rampur, (except Barfani circle), Reasi (except Barfani circle), Ramban (except Barfani and Bahihal circles), Ramnagar (except Barfani circle), Udhampur (except Barfani circle), Basohli (except Barfani circle).	15th Phagan ..	15th Assuj ...	15th Maghar	1st Jeth ..	15th Har.
Jammu.						

	2	3	4	5	6	7
Name of District or Ilaga.	Latest date for service of notice of relinquishment [section 41 (2)]		TIME FOR SERVICE OF NOTICE OF EJECTMENT [SECTION 50 (2)]		TIMES FOR EJECTMENT [SECTIONS 46 50, AND 53.]	
			Begins.	Ends.	Begins	Ends.
(c) Rampur (Barfani circle), Reasi (Barfani circle), Ramban (Barfani and Banihal circles), Udhampur (Barfani circle), Rmnagar (Barfani circle), Basohli (Barfani circle), and Kishtwar.		15th Bhadon	1st Phagan..	1st Baaisakh	15th Assuj ..	15th Katik..
(d) The whole	..	15th Bhadon	1st Baaisakh...	15th Har ..	15th Assuj ..	15th Katik.
(e) Gilgit District	..	15th Bhadon	1st Baaisakh..	15th Jeth ..	15th Assuj ..	End Katik.
(f) Ladakh	..	15th Bhadon	1st Baaisakh..	15th Jeth ..	15th Assuj ..	15th Katik.
(g) Baltistan	..	15th Bhadon	1st Baaisakh..	15th Jeth ..	15th Assuj ..	15th Katik

Province.

Kashmir.

Frontiers.

THE AGRICULTURISTS' RELIEF ACT, 1983.**Act No. I of 1983.****CONTENTS.****SECTION.****Preamble.****CHAPTER I.****PRELIMINARY.**

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2. Definitions.

CHAPTER II.**SCOPE OF THE ACT AND JURISDICTION OF COURTS.**

3. Application of Act to certain suits.
4. Jurisdiction to hear certain suits.
5. Appeals.
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7. Repealed.
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SECTION.

9. Mode of taking accounts.
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16. Term within which suit to be instituted.
17. Bar of application of Order 21, Rule 2 (3) of the Code.
18. The Civil Courts Act and Civil Procedure Code to apply to proceedings under this Act.
19. Bar of application of the Small Cause Courts Act and the Usurious Loans Act.
20. Court-fee on plaints under section 3, clause (a).
21. Power to make rules.
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THE AGRICULTURISTS' RELIEF ACT, 1983.**Act No. 1 of 1983.**

*[Sanctioned by His Highness the Maharaja Bahadur in Council
vide State Council Resolution No. 96, dated 5th July 1926.]*

An Act for the Relief of Indebted Agriculturists.

Preamble. WHEREAS it is expedient to relieve the agricultural classes from indebtedness; It is hereby enacted :—

CHAPTER I.**PRELIMINARY.**

Short Title. 1. (a) This Act may be called the Agriculturists' Relief Act 1983.

Commencement (b) It shall come into force on and from the fifteenth day of Sawan, 1983.

Extent. ¹[(c) It extends to the Provinces of Jammu and Kashmir only in the first instance but ²[the Government] may, by Notification, extend all or any of the provisions of this Act to any other local area within the State, and may also, by notification, exempt any local area, or class of persons, suits or transactions from all or any of the provisions of this Act].

Definitions. 2. In this Act unless there is something repugnant in the subject or context,—

¹[(1) "agriculturist" means a person who, by himself or by his servants or by his tenants, earns his livelihood wholly or principally by agriculture, or by horticultural or pastoral pursuits, carried on within the limits of the State (including ilaqa of Poonch and the Jagir of Chenani) or who, within such limits, ordinarily engages personally in agricultural labour or such pursuits; and includes a *Lohar*, a *Tarkhan*, and a *Kumhar* who, within such limits, is wholly or principally dependent on a share of the agricultural produce given to him on

¹Sections 1(c) and 2(1) substituted by Notification 17-L/83 published in the Government Gazette dated 21st Maghar 1983.

²Substituted for "His Highness the Maharaja Bahadur in Council" vide Act X of 1996.

account of his services to agriculturists in his capacity of a *Lohar, Tarkhan or Kumhar* ;

EXPLANATION—(a) An "agriculturist" who, without any intention of changing his status as such, temporarily ceases to earn his livelihood by such labour or pursuits, or who is prevented from so earning his livelihood or so engaging in such labour or pursuits by age or by bodily infirmity or by necessary absence due to service in the non-commissioned ranks of His Majesty's Indian Army or of His Highness' Army, or due to service in a Civil Department under the Government of His Highness or the Government of India when emoluments of such service do not exceed twenty-five rupees per mensem, does not thereby cease to be an "agriculturist" within this definition.

(b) An assignee of Government assessment or a mortgagee is not as such an agriculturist within this definition.

(2) "the Court", when used with reference to any suit or proceeding, means the Court competent under this Act to hear such suit or proceeding ;

¹[(3) "money" includes cash, agricultural, horticultural or pastoral produce, livestock and articles made from such produce or livestock by the agriculturist or his family and also the implements of his avocation] ;

(4) "notification" means a notification published in the Jammu and Kashmir Government Gazette ; and

(5) all other expressions used but not defined in this Act shall, if defined in the ²Jammu and Kashmir Land Revenue Regulation, 1980, or the Jammu and Kashmir Tenancy Act, 1980, have the meanings respectively assigned to such expressions in the said Regulation or Act.

CHAPTER II.

SCOPE OF THE ACT AND JURISDICTION OF COURTS.

3. Except as may hereinafter be otherwise provided, the ^{Application of Act to} provisions of this Act apply to—
^{certain suits.}

(a) suits for an account instituted by an agriculturist under the provisions hereinafter contained ; and

(b) suits, in which the defendant, or any one of the defendants, is an agriculturist, for the recovery of money alleged to be due to the plaintiff

—on account of money lent or advanced to, or paid for the defendant, or as the price of goods

¹Section 2(3) substituted by Notification No. 17-L/83 published in the Government Gazette dated 21st Maghar 1983.

²Land Revenue Act XII of 1996.

sold, or

—on an account stated between the plaintiff and the defendant, or

—on a written or unwritten engagement for the payment of money not hereinbefore provided for.

4. (1) The Court of a Subordinate Judge shall have jurisdiction to hear, irrespective of the amount or value of the subject-matter, all suits to which this Act applies.

Jurisdiction to hear certain suits.

(2) Save as otherwise provided in ¹[sub-section (3)] and notwithstanding anything to the contrary in section 16 of the Jammu and Kashmir State Small Cause Courts Act, 1968, no Court exercising jurisdiction under the said Act and no Court inferior to the Court of a subordinate Judge shall hear any such suit.

²[(3) The High Court of the Jammu and Kashmir State may, by notification, empower any Munsiff or Tehsildar to hear all or any such suits the amount or value of the subject-matter of which does not exceed five hundred rupees, and may likewise subject to the aforesaid limit of five hundred rupees, determine the jurisdiction of the Munsiff or Tehsildar so empowered.]

³**5.** (1) No appeal shall lie from any decree passed in a suit to which this Act, applies, when the amount decreed exclusive of further interest allowed by the decree on such amount does not exceed five hundred rupees and the decree is passed by a Subordinate Judge, or when such amount does not exceed one hundred rupees and the decree is passed by a Munsiff or Tehsildar empowered under section 4, sub-section (3):

Appeals

Provided that nothing herein contained shall be deemed to affect the right of appeal from a decision under section 47 of the Code of Civil Procedure directing the arrest or detention in a civil prison of any person in execution of a decree.

(2) One appeal and one only shall lie to the Subordinate Judge from the decree passed by a Munsiff or Tehsildar empowered under section 4, sub-section (3), in a suit to which this Act applies when the amount decreed exclusive of further interest allowed by the decree on such amount exceeds one hundred rupees but does not exceed five hundred rupees:

Provided that nothing herein contained shall affect section 24 of the Code of Civil Procedure.

¹In section 4(2) "sub-section (3)" substituted for words "this Regulation" vide Notification No. 17-L/83.

²Sub-section (3) substituted for proviso by Notification 17-L/83 as amended by Notification No. 3-L/85 published in the Government Gazette dated 21st Maghar 1983 and 8th Bhadon 1985 respectively.

³Section 5(1) (2) and (3) substituted by Notification 17-L/83 published in the Government Gazette dated 21st Maghar 1983.

(3) No appeal shall lie from any order passed by the Court in any such suit with the exception of the order specified in clause (h) of sub-section (1) of section 104 of the Code of Civil Procedure.]

¹[(4) The appeal from the decree passed by a Subordinate Judge shall lie when the amount decreed exclusive of further interest allowed by the decree on such amount exceeds five hundred rupees but does not exceed two thousand and five hundred rupees, to the District Court, and, when it exceeds two thousand and five hundred rupees, to the High Court.]

¹[5-A. (1) ²[The Government] may from time to time appoint a special judge or judges for any local area to inspect, supervise and control in the place of the District Judge the proceedings of all Courts empowered under section 4 in any suit of the description mentioned in section 3 or any appeal under section 5, and may cancel any such appointment.

Superintendence of appeals to and revision by special Judges.

(2) Any appeal which lies under section 5 to a Subordinate Judge or the District Court may be heard and determined by such Special Judge.

(3) Such Special Judge may withdraw any such suit, appeal or proceeding pending before any Subordinate Judge, Munsiff or Tehsildar and may either transfer it to any other Court of equal or superior jurisdiction competent to determine it under this Act or may himself determine it in accordance with the provisions of this Act.

(4) Such Special Judge may, for the purpose of satisfying himself of the legality or propriety of any decree or order passed by any Subordinate Judge, Munsiff or Tehsildar in any such suit or any such appeal or as to the regularity of the proceedings therein, call for and examine the record of such suit, appeal or proceeding and pass such order thereon as he thinks fit:

Provided that no decree or order shall be reversed or altered for any error or defect or otherwise, unless a failure of justice appears to have taken place.

(5) No appeal shall lie from any decree or order passed by such Special Judge under sub-section (2), (3) or (4) but High Court may exercise its powers of revision under section 115 of the Code of Civil Procedure, 1977 with regard to any such decree or order.

(6) Such Special Judge may refer to the High Court

¹Section 5(4) and section 5-A added by Notification No. 8-L/84 published in the Government Gazette dated 9th Bhadon 1984.

²Substituted for "His Highness the Maharaja Bahadur" vide Act X of 1996 published in the Government Gazette dated 15th Bhadon 1996.

under section 113 of the Code of Civil Procedure, 1977, any question of law, or usage having the force of law, or the construction of a document arising in any case pending before him under sub-section (2), (3) or (4) as if that case were a suit or an appeal pending before him; and in respect of every reference so made, the provision of Order XLVI of said Code shall apply.

(7) If any conflict of authority arises between the Special Judge and the District Judge, the High Court shall pass such order thereon consistent with this Act as it thinks fit.

6. The provisions of this Act apply also to all suits mentioned in section 3 which, though instituted before the date on which this Act comes into force, are pending in any Court of first instance on such date and, if such Court is not competent under section 4 to hear any such suit, shall be transferred to and heard, in accordance with the provisions of this Act, by the Court competent to hear such suits under section 4.

CHAPTER III.

OF SUITS AND OTHER PROCEEDINGS TO WHICH AGRICULTURISTS ARE PARTIES.

¹(7). Repealed.

8. In any suit of the description mentioned in section 3, clause (b), in which the defendant or any one of the defendants, is an agriculturist

History of transactions with agriculturist-debtors to be investigated.

the Court, if the amount of the creditors's claim is disputed, shall examine both the plaintiff and the defendant as witnesses unless, for reasons to be recorded by it in writing, it deems it unnecessary so to do and shall enquire into the history and merits of the case, from the commencement of the transactions between the parties and the persons (if any) through whom they claim out of which the suit has arisen, first, with a view to ascertaining whether there is any defence to the suit on the ground of fraud, mistake, accident, undue influence, or otherwise, and secondly, with a view to taking an account between such parties in manner hereinafter provided.

When the amount of the claim is admitted and the Court, for reasons to be recorded by it in writing, believes that such

admission is true and is made by the debtor with a full knowledge of his legal rights as against the creditor, the Court shall not be bound so to enquire, but may do so if it thinks fit.

In other cases in which the amount of the claim is admitted, the Court shall be bound to enquire as aforesaid. ✓

Nothing herein contained shall affect the right of the parties to require that any matter in difference between them be referred to arbitration.

9. (1) When the Court enquires into the history and merits of a case under sections 8, it shall,

Mode of taking accounts.

notwithstanding any agreement between the parties or the persons (if any) through whom they claim, as to allowing compound interest or otherwise determining the manner of taking the account,

and notwithstanding any statement or settlement of account or any contract purporting to close previous dealings and create a new obligation,

open the account between the parties from the commencement of the transactions, and take that account according to the rules laid down in sub-section (2) :

Provided that in the exercise of the powers conferred by this and the last preceding section the Court shall not re-open any agreement or contract purporting to close previous dealings and create a new obligation which has been entered into by the parties or the persons (if any) through whom they claim, or go behind and beyond a statement or settlement of account which is of a date prior to first day of Baisakh, 1978 : ✓

¹[Provided further that nothing hereinbefore contained and nothing contained in section 10 shall be deemed to authorise the Court to re-open any agreement, contract or account when the account has been finally closed and settled between the parties or the aforesaid persons leaving no subsisting liabilities between them] ✓

(2) The Court shall take the account under sub-section (1) in accordance with the following rules, namely :—

(a) ¹[In the account of principal] there shall be debited to the debtor such money as may from time to time have been actually received by him or on his account from the creditor as part of the transactions, but not any accumulated interest which has been converted into principal at any statement or settlement of account or by any contract made in the course of the transactions :

Provided that the Court shall allow such debit when such statement, settlement or contract is of a date prior to the first day of Baisakh, 1978 :

(b) ¹[In the account of interest] there shall be debited to the debtor monthly simple interest ²[on the balance of the principal for the time being outstanding] at the stipulated rate of interest or, in its absence, at the rate considered fair by the Court, not exceeding in either case twelve per centum per annum on such balance :

(c) All money paid by or on account of the debtor to the creditor or on his account, and all profits, service or other advantages of every description, received by the creditor in the course of the transactions (estimated, if necessary, at such money value, as the Court in its discretion, or with the aid of arbitrators appointed by it may determine), ²[shall be credited first in the account of interest, and when any payment is more than sufficient to discharge the balance of interest due at the time it is made, the residue of such payment shall be credited to the debtor in the account of principal]:

(d) ²[The accounts of principal and interest] shall be made up to the date of instituting the suit and the ²[aggregate of the balances] (if any) appearing due ²[on both such accounts on that date] shall be deemed to be the amount due on that date; except when the balance appearing due on the interest-account exceeds one half of that appearing due on the principal-account, in which case the latter balance plus one half thereof shall be deemed to be the amount then due. The party from whom this amount is thus found due shall be bound to repay it whether such party is a plaintiff or a defendant in the suit, and the Court shall by its decree declare and direct accordingly.

(e) For the purposes of clauses (a) and ²[(c)] the value of the produce for which a record of prices is kept in the local Tehsil office shall be debited or credited as the case may be, at such rates for the month during which such produce was sold, advanced, supplied or received.

10. Any agriculturist may sue for an account of money lent or advanced to or paid for him by a creditor, or due by him to the creditor as the price for goods sold, or on a written or unwritten engagement for the payment of money and of money paid by him to the creditor, and for a decree declaring the amount, if any, still payable by or to him to or by the creditor.

Agriculturist-debtors
may sue for accounts.

¹Inserted by Notification 17-L/83 published in the Government Gazette dated 21st Maghar 1983.

²Substituted by Notification 17-L/83 published in the Government Gazette dated 21st Maghar 1983.

When any such suit is brought the amount (if any) payable by the plaintiff or the defendant shall be determined under the same rules as would be applicable under this Act, if the creditor had sued the plaintiff for recovery of the debt.

Amount of debts in such cases to be determined according to foregoing provisions.

11. A ¹[decree passed *ex parte* or otherwise] under section 10 shall, besides, declaring the amount due, direct that such amount shall be paid in one or more instalments, with or without interest, and, judgment-debtor may pay the amount of such decree, or the amount of each instalment fixed by such decree as it falls due, into Court, in default where of execution of the decree may be enforced by the decree-holder in the same manner as if he had obtained a decree in a suit to recover the debt.

Decree under section 10 shall provide for payment by instalments.

Execution of decrees under this section.

12. The plaintiff in any suit instituted under section 10 may at any stage of such suit deposit in Court such sums of money as he considers a satisfaction in full of the defendant's claim against him.

Notice of deposit shall be given by the Court to the defendant, and the amount of the deposit shall (unless the Court otherwise directs) be paid to the defendant on his application.

No interest shall be allowed to the defendant on any sum deposited from the date of the receipt of such notice whether the sum deposited be in full satisfaction of the claim or fall short thereof.

13. In cases other than those provided for in section 11 at the time of passing a ¹[decree *ex parte* or otherwise] against an agriculturist in a suit to which this Act applies the Court shall by such decree direct that the amount of the decree shall be paid in one or more instalments, with or without interest.

Instalments.

14. The number, amount and intervals for the payment of the instalments fixed by the Court under section 11 or 13 shall be fixed within the paying capacity of the judgment-debtor.

Instalments to be within paying capacity of the judgment-debtor.

²[Provided that:—

(a) The whole of the unrealized balance of the decretal amount shall be recoverable in lump at once in case default is made by the judgment-debtor in the payment of two or more

¹Substituted by Act II of 1988 published in the Government Gazette dated 4th Bhadon 1988.

²Proviso to section 14 added by Act II of 1988 published in the Government Gazette dated 4th Bhadon 1988

consecutive instalments unless such default was due to abnormal circumstances beyond the control of the judgment-debtor which in the opinion of the Court executing the decree entitled the judgment-debtor to an extension in the period of instalments.

(b) The Court which passed the decree or to which the decree is transferred for execution, if it is satisfied that a substantial change has taken place in the paying capacity of the judgment-debtor may, on the application of the decree-holder or the judgment-debtor from time to time vary the number and alter the amount of instalments fixed by the decree to suit the changed paying capacity of the judgment-debtor.]

EXPLANATION.—“Paying capacity” means the amount which the judgment-debtor can reasonably be expected to pay after providing for the exercise of his avocation and for the essential necessities of himself and of such members of his family as are dependent on him.

15. The rate of further interest allowed in any decree passed in a suit to which this Act applies shall not exceed ¹[twelve per centum] per annum and the aggregate amount of further interest so allowed shall not exceed one half of the amount decreed exclusive of costs.

Limit of further interest.

CHAPTER IV.

MISCELLANEOUS.

²[**16.** A suit of the description mentioned in section 3 clause (a) may be instituted within six years from the date of the last transaction between the parties or persons claiming through them or from the date of the last balance struck between the parties of such persons, whichever is the later date].

Term within which suit to be instituted.

17. Sub-rule (3) of Rule 2 of Order 21 of the Code of Civil Procedure shall not apply to payments out of Court made in any proceeding under this Act in any case where an acknowledgment by the judgment-creditor for the same is produced, or when the payment is either admitted by him or proved.

Bar of application of Order 21, Rule 2 (3) of the Code.

¹Substituted for “six per centum” by Notification 17-L/83 published in the Government Gazette dated 21st Maghar 1983.

²Substituted by Notification 17-L/83 published in the Government Gazette dated 21st Maghar 1983.

18. Except in so far as these are inconsistent with this Act the provisions of the Code of Civil Procedure and the Jammu and Kashmir State Civil Courts Act, 1977, shall apply in all suits and proceedings before the Court under this Act. The Court exercising jurisdiction under section 4 shall for the purposes of the said Code, and the said Act be deemed inferior to the District Court.

19. The provisions of the Jammu and Kashmir State Small Cause Courts Act, 1968, and Usurious Loans Act, 1977 shall not apply to the proceedings of the Court under this Act.

20. The plaintiff in a suit under clause (a) of section 3 shall state the amount at which the relief sought in it is valued by the plaintiff and subject to a minimum court-fees of five rupees shall be liable to the fee payable therefor under the Court Fees Act, 1977.

21. The High Court with the sanction of [the Government] may, from time to time, make all such rules, as he may deem necessary for carrying out the provisions herein contained.

22. All rules made under this Act shall be published in the Jammu and Kashmir Government Gazette, and shall thereupon, in so far as they are consistent with this Act, have the force of law.

LAW DEPARTMENT.

Notification No. 5-L/1983, dated 7th July 1983 as amended by Notification No. 18-L/1983, dated 18th November 1983.

In exercise of the authority vested in him under section 1 of the Agriculturists' Relief Act, 1983, His Highness the Maharaja Bahadur in Council is pleased to exempt, and does hereby exempt, with effect from the 15th Sawan 1983, from all the operations of the said Act :—

1. all suits of the descriptions mentioned in section 3 of the said Act, and all proceedings arising out of such suits, when any party to such suit or proceeding or to any trans-

¹In section 21 the words "the Government" substituted for the words "His Highness the Maharaja Bahadur in Council" vide Act X of 1996 published in the Government Gazette dated 15th Bhadon 1996. NOTE:—See also Notification No. 11-L/84 published in the Government Gazette dated 9th Maghar 1984.

action out of which such suit or proceeding arises is a company registered under the Companies Act, 1977, or is incorporated or registered in British India or in any Native State of India, or in any other part of the British Empire in accordance with the Law governing the incorporation or registration of such companies.

NOTE. Clauses 1 and 2 of Notification No. 6-L/83 repealed and clause 3 renumbered as clause 1 vide Notification No. 18-L/83 published in Government Gazette dated the 21st Maghar 1989.

Notification dated Jammu, the 27th November 1926.

No. 65.— In supersession of Notification No. 1-C/1983, the following rules have been made by the Judge High Court, under section 21 of the Agriculturists' Relief Act, and sanctioned by His Highness' Government Jammu and Kashmir (*vide* Council Resolution No. 2, dated 15th November 1926) and are hereby promulgated for general information.

Rules under the Agriculturists' Relief Act (No 1 of 1983).

1. The Courts of Sub-judges and specially empowered Munsiffs and Tehsildars will have exclusive original jurisdiction within their ordinary territorial limits for all suits brought under the Agriculturists' Relief Act with pecuniary limits as follows :—

Tehsildars and Munsiffs	.. Upto Rs. 500.
Sub-judges	.. Unlimited.

2. Decrees of the Tehsildars and of Munsiffs upto the value of Rs. 100 will be non-appealable. But those beyond these limits will be appealable to the Sub-judges within whose territorial jurisdiction the Courts passing the decrees are situate.

3. The original decrees of the Sub-judges upto the value of Rs. 500 will be non-appealable.

4. Every pending original suit of the nature, exclusively cognizable by the aforesaid Courts, under the present Act in which final decree has not been passed on the date of coming into force of this Act, shall be transferred by the Court hearing it, to the Court of the Sub-judge or Munsiff or Tehsildar having jurisdiction to decide it under these Rules.

This Rule will not affect the pending appeals from decrees and orders already passed.

5. With regard to the presentation of complaints, applications and appeals, issue of processes, appearance of parties, hearing of suits and examination of witnesses, etc., etc., the Rules and Orders for the guidance of the Courts subordinate to the High Court, as sanctioned by His Highness the Maharaja Bahadur and published under authority in chapters III to XV, shall apply *mutatis mutandis* to all suits under this Act.

6. A schedule of Tehsil rates of all principal articles of agricultural produce will be kept and maintained from Samvat 1978 and on wards by every Court competent to hear suits under the Act which will determine the value or price of the advances or payments in kind in accordance with those rates with reference to the particular month in question.

7. When fixing instalments on the decretal amount with future interest, the Court will fix such instalments as exhaust the total amount of principal and interest within the period fixed for payment and do not exceed the paying capacity of the judgment-debtor.

EXAMPLE.—If the decretal amount of say Rs. 100 including costs is to bear future interest at 6 per centum per annum and it is declared to be paid up by five yearly instalments in accordance with the paying capacity of the judgment-debtor, then each of the instalments so fixed should be Rs. 23/8/0 per year as the following calculation will show :—

	Rs. A. P.
Interest in the first year on Rs. 100	... 6 0 0
Interest in the 2nd year on Rs. 80	... 4 12 0
Interest in the 3rd year on Rs. 60	... 3 9 0
Interest in the 4th year on Rs. 40	... 2 6 0
Interest in the 5th year on Rs. 20	... 1 8 0

Total	... 17 14 0

The total amount principal and interest=Rs. 117-14-0.

Therefore dividing it by five the amount of each instalment would be approximately Rs. 23-8-0 (excluding pies).

18. Repealed.

9. Monthly returns containing the statistics of the suits and of the execution of decrees together with their results must be submitted by the Courts empowered under this Act by the 10th of the following month, to the District Judges of their respective provinces, who in their turn will submit those statements with their reviews and criticisms to the High Court on a date not later than the 20th of the following month.

¹ORDER No. 16-H. 1937.

Judicial Minister's Memo. No. 740 dated 5th February 1937, regarding extension of the Agriculturists' Relief Act to Frontier Wazarat.

His Highness the Maharaja Bahadur has been pleased to accord sanction to the extension of the provisions of the Agriculturists' Relief Act to the Frontier Wazarat as recommended by the Judicial Minister.

By command,

(Sd.) E. J. D. COLVIN,

PRIME MINISTER.

THE POLICE ACT, 1983.

Act No. II of 1983.

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THE POLICE ACT, 1983.**Act NO. II of 1983.**

[Sanctioned by His Highness the Maharaja Bahadur in Council, vide State Council Resolution No. CXVII, dated 29th January 1927.]

Whereas it is expedient to re-organize the Police and to make it a more efficient instrument for the prevention and detection of crime ; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Police Act of 1983.

Commencement.

2. This Act shall come into force on and from the date of its third publication in the Jammu and Kashmir Government Gazette.

Repeal.

3. The Police Ain No. 1 of 1905 is hereby repealed.

Interpretation clause.

4. The following words and expression in this Act shall have the meaning assigned to them, unless there be something in the subject or context repugnant to such construction that is to say :—

the words "District Magistrate" shall mean the chief officer charged with the executive administration of a district and exercising the powers of a Magistrate, by whatever designation the chief officer charged with such executive administration is styled :

the word "Magistrate" shall include all persons within the general Police district exercising all or any of the powers of a Magistrate :

the word "police" shall include all persons who shall be enrolled under this Act:

the words "general police district" shall embrace the local area within the State, in which this Act shall be ordered to take effect :

the words "Superintendent" and "Superintendent of Police" shall include any Assistant Superintendent or other person appointed by general or special order of ¹[the Government] to perform all or any of the duties of a Superintendent of Police under this Act in any district or part of a district :

the word "property" shall include any movable property, money or valuable security :

words importing the singular number shall include the plural number and words importing the plural number shall

¹In sections 4, 5, 6, 7, 8, 12, 14, 15, 16, 17, 26, 36, 42, 43, and 44 the words "the Government" substituted for the words "His Highness the Maharaja Bahadur in Council" vide Act X of 1996 published in Government Gazette dated the 15th Bhadon 1996. Note:— See also Notification No; 11-L/84 published in the Government Gazette dated 9th Maghar 1984.

include the singular number :

words importing the masculine gender shall include females :

the word "person" shall include a company or corporation :

the word "month" shall mean a Hindi calendar month :

the word "cattle" shall, besides horned cattle, include elephants, camels, horses, asses, mules, sheep, goats and swine.

5. The entire police establishment under the general police district, shall, for the purposes of this Act be and deemed to be one police force and shall be formally enrolled and shall consist of such number of officers and men, and shall be constituted in such manner, and the members of such force shall receive such pay, as shall from time to time be ordered by ¹[the Government].

6. No person, Court or officer shall have authority to appoint, supersede, or control any police functionary except as authorised by this Act:

Provided that nothing herein contained shall be deemed to affect in any way the powers of superintendence and control vested in ¹[the Government].

7. The administration of the police throughout the general police district shall be vested in an officer to be styled the Inspector General of Police.

The administration of the police throughout the local jurisdiction of the District Magistrate shall, under the general control and direction of such Magistrate, be vested in a Superintendent and such Assistant and Deputy Superintendents as ¹[the Government] shall consider necessary.

The Inspector General and the Superintendents of Police shall from time to time be appointed by ¹[the Government] and may be removed by the same authority.

The Assistant Superintendents and Deputy Superintendents shall from time to time be appointed by ¹[the Government] and may be removed by the same authority.

8. The appointment of all Police officers other than those mentioned in section 7 of this Act, shall be under such rules, as ¹[the Government] shall from time to time sanction, rest with the Inspector General and Superintendents of Police, who may under such rules as aforesaid at any time dismiss, suspend or reduce any Police officer, whom they shall think remiss or negligent in the discharge of his duty, or unfit for the same :

¹See footnote under section 4.

²In section 7 "Government" substituted for the words "Member-in-charge of the Police Department" vide Act X of 1996 published in the Government Gazette dated 15th Bhadon 1996.

or may award any one or more of the following punishments to any Police officer who shall discharge his duty in a careless or negligent manner, or who by any act of his own shall render himself unfit for the discharge thereof namely:—

(a) confinement to quarters for a term not exceeding fifteen days, with or without punishment drill, extra guard, fatigue or other duty ;

(b) deprivation of good conduct pay ;

(c) removal from any office of distinction or special emolument.

9. Every Police officer so appointed shall receive on his appointment a certificate in the form annexed to this Act under the seal of the Inspector General of Police or such other officer as the Inspector General shall appoint, by virtue of which the person holding such certificate shall be vested with the powers, functions and privileges of a Police officer.

Such certificate shall cease to have effect whenever the person named in it ceases for any reason to be a Police officer, and on his ceasing to be such an officer, shall be forthwith surrendered by him to any officer empowered to receive the same.

A Police officer shall not by reason of being suspended from office cease to be a Police officer. During the term of such suspension the powers, functions and privileges vested in him as a Police officer shall be in abeyance, but he shall continue subject to the same responsibilities, discipline and penalties and to the same authorities, as if he had not been suspended.

10. No Police officer shall be at liberty to withdraw himself from the duties of his office, unless expressly allowed to do so by the Superintendent or by some other officer authorised to grant such permission or without the leave of the Superintendent to resign his office, unless he shall have given to his superior officer notice in writing, for a period of not less than two months of his intention to resign.

11. No Police officer shall engage in any employment or office whatever other than his duties, under his Act, unless expressly permitted to do so in writing by the Inspector General.

12. The Inspector General of Police may, from time to time, subject to the approval of '[the Government]' frame such orders and rules as it shall deem expedient relative to the organization, classification and distribution of the police force, the places at which the members of the force shall reside, and

¹See footnote under section 4.

the particular services to be preformed by them, their inspection, the description of arms accoutrements and other necessities to be furnished to them; the collecting and communicating by them of intelligence and information and all such other orders and rules relative to the police force as the Inspector General shall, from time to time, deem expedient for preventing abuse or neglect of duty, and for rendering such force efficient in the discharge of its duties.

13. It shall be lawful for the Inspector General of Police or for the Superintendents, subject to the general direction of the District Magistrate, on the application of any person showing the necessity thereof, to depute any additional number of Police officers to keep the peace at any place within the general police district, and for such time as shall be deemed proper. Such force shall be exclusively under the orders of the Superintendent, and shall be at the charge of the person making the application:

Additional Police officers employed at cost of individuals

Provided that it shall be lawful for the person on whose application such deputation shall have been made, or giving one month's notice in writing to the Inspector General or to the Superintendent, to require that the Police officers so deputed shall be withdrawn and such person shall be relieved from the charge of such additional force from the expiration of such notice.

14. Whenever any railway, canal or other public work, or any manufactory or commercial concern, shall be carried on, or be in operation in any part of the country, and it shall appear to the Inspector General that the employment of an additional police force in such place is rendered necessary by the behaviour or reasonable apprehension of the behaviour of the persons employed upon such work, manufactory or concern, it shall be lawful for the Inspector General with the sanction of ¹[the Government] to depute such additional force to such place and employ the same so long as such necessity shall continue and to make orders, from time to time, upon the person having the control or custody of the funds used in carrying on such work, manufactory or concern, for the payment of the extra force so rendered necessary and such person shall thereupon cause payment to be made accordingly.

Appointment of additional force in the neighbourhood of Railway and other works

Quartering of additional Police in disturbed or dangerous districts.

15. (1) It shall be lawful for ¹[Government] by proclamation to be notified in the Jammu and Kashmir Government Gazette and in such other manner as ¹[the Government]

¹See footnote under section 4.

shall direct, to declare that any area, within the State has been found to be in a disturbed or dangerous state or that, from the conduct of the inhabitants of such area or of any class or section of them, it is expedient to increase the number of police.

(2) It shall thereupon be lawful for the Inspector General of Police, or other officer authorised by ¹[the Government] in this behalf, to employ any police force in addition to the ordinary fixed complement to be quartered in the area specified in such proclamation as aforesaid.

(3) Subject to the provisions of sub-section (5) of this section, the cost of such additional police force shall be borne by the inhabitants of such area described in the proclamation.

(4) The District Magistrate after such inquiry as he may deem necessary, shall apportion such cost among the inhabitants who are, as aforesaid, liable to bear the same and who shall not have been exempted under the next succeeding sub-section. Such apportionment shall be made according to the Magistrate's judgment of the respective means within such area of such inhabitants.

(5) It shall be lawful for ¹[the Government], by order to exempt any persons or class or section of such inhabitants from liability to bear any portion of such cost.

(6) Every proclamation issued under sub-section (1) of this section shall state the period for which it is to remain in force, but it may be withdrawn at any time or continued from time to time for a further period or periods as ¹[the Government] may in each case think fit to direct.

EXPLANATION.—For the purposes of this section, 'inhabitants' shall include persons who themselves or by their agents or servants occupy or hold land or other immovable property within such area, and landlords who themselves or by their agents or servants collect rents direct from ryots or occupiers in such area, notwithstanding that they do not actually reside therein.

16. (1) If, in any area in regard to which any proclamation notified under the last preceding section is in force, death or grievous hurt or loss of, or damage to, property has been caused by or has ensued from the misconduct of the inhabitants of such area or any class or section of them, it shall be lawful for any person, being an inhabitant of such area, who claims to have suffered injury from such misconduct to make within one month from the date of injury or such shorter period as may be prescribed, an application for compensation to the District Magistrate or to the Sub-Divisional Magistrate within the local limits of whose jurisdiction such

Awarding compensation to sufferers from misconduct of inhabitants or persons interested in land.

¹See footnote under section 4.

area is situated.

(2) It shall thereupon be lawful for the District Magistrate with the sanction of '[the Government] after such enquiry as he may deem necessary, and whether any additional police force has or has not been quartered in such area under the last preceding section to:—

(a) declare the persons to whom injury has been caused by or has ensued from such misconduct;

(b) fix the amount of compensation to be paid to such persons and the manner in which it is to be distributed among them; and

(c) assess the proportion in which the same shall be paid by the inhabitants of such area other than the applicant who shall not have been exempted from liability to pay under the next succeeding sub-section:

Provided that the Magistrate shall not make any declaration or assessment under this sub section, unless he is of opinion that such injury as aforesaid has arisen from a riot or unlawful assembly within such area and that the person who suffered the injury was himself free from blame in respect of the occurrences which led to such injury.

(3) It shall be lawful for the '[Government] by order to exempt any persons or class or section of such inhabitants from liability to pay any portion of such compensation.

(4) Every declaration or assessment made or order passed by the District Magistrate under sub-section (2) shall be subject to revision by '[the Government] but save as aforesaid shall be final.

(5) No civil suit shall be maintainable in respect of any injury for which compensation has been awarded under this section.

(6) *Explanation.*—In this section the word "inhabitants" shall have the same meaning as in the last preceding section,

17. (1) All moneys payable under sections 13, 14, 15 and 16 shall be recoverable by the District Magistrate in the manner provided by section 386 and 387 of the Code of Criminal Procedure, for the recovery of fines, or by suit in any competent Court.

(2) All moneys paid or recovered under sections 13, 14 and 15 shall be credited to a fund to be called "The General Police Fund" and shall be applied to the maintenance of the police force under such orders as '[the Government] shall pass

(3) All moneys paid or recovered under section 16 shall be paid by the District Magistrate to the persons to whom and in the proportions in which the same are payable under that

Recovery of moneys payable under sections 13, 14, 15 and 16 and disposal of same when recovered.

section.

18. When it shall appear that any unlawful assembly, or riot or disturbance of the peace has taken place, or may be reasonably apprehended and that the police force ordinarily employed for preserving the peace is not sufficient for its preservation and for the protection of the inhabitants and the security of property in the place where such unlawful assembly or riot or disturbance of the peace has occurred, or is apprehended it shall be lawful for any Police officer not below the rank of Inspector to apply to the nearest Magistrate to appoint so many of the residents of the neighbourhood as such Police officer may require to act as special Police officers for such time and within such limits as he shall deem necessary, and the Magistrate to whom such application is made shall, unless he see cause to the contrary, comply with the application.

19. Every special Police officer so appointed shall have the same powers, privileges and protection, and shall be liable to perform the same duties and shall be amenable to the same penalties and be subordinate to the same authorities as the ordinary officers of Police.

20. If any person being appointed a special Police officer as aforesaid shall, without sufficient excuse, neglect or refuse to serve as such, or to obey such lawful order or direction as may be given to him for the performance of his duties, he shall be liable, upon conviction before a Magistrate, to a fine not exceeding fifty rupees for every such neglect, refusal or disobedience.

21. Police officers enrolled under this Act shall not exercise any authority except the authority provided for a Police officer under this Act and any Act or law for the time being in force, for regulating criminal procedure.

22. Nothing in this Act shall affect any hereditary or other village Police officer, unless such officer shall be enrolled as a Police officer under this Police Act. When so enrolled such officer shall be bound by the provisions of the last preceding section. No hereditary or other village Police shall be enrolled without his consent and the consent of those who have the right of nomination.

23. Every Police officer shall, for all purposes in this Act contained, be considered to be always on duty, and may at anytime be employed as a Police officer in any part of the general police district.

24. It shall be the duty of every Police officer promptly to obey and execute all orders and warrants lawfully issued to him by any competent authority; to collect and communicate intelligence affecting the public peace; to prevent the commission of offences and public nuisances; to detect and bring offenders to justice and to apprehend all persons whom he is legally authorised to apprehend, and for whose apprehension sufficient ground exists and it shall be lawful for every Police officer for any of the purposes mentioned in this section, without a warrant to enter and inspect any drinking shop, gaming house or other place of resort of loose and disorderly characters.

25. It shall be lawful for any Police officer to lay any information before a Magistrate, and to apply for a summons, warrant, search-warrant or such other legal process as may by law issue against any person committing an offence.

26. (1) It shall be the duty of every Police officer to take charge of all unclaimed or ownerless property and to prepare and furnish an inventory thereof to the District Magistrate or the Sub-Divisional Magistrate or other Magistrate of the 1st class having jurisdiction, empowered by [the Government] in this behalf.

(2) Such inventory shall if possible be prepared when the Police officer takes charge of such property in the presence of two respectable persons of the locality.

27. (1) Such Magistrate may detain the property and issue a proclamation specifying the articles of which it consists, and requiring any person who has any claim thereto to appear and establish his right to the same within six months from the date of such proclamation.

(2) The provisions of ²Section 525 of the Code of Criminal Procedure 1969 shall be applicable to property referred to in this section.

(3) If within the period limited in such proclamation any claim is referred to such property or proceeds thereof such Magistrate may make such order as he thinks fit respecting the disposal of such property or proceeds or the delivery of such property or proceeds to the person, entitled to the possession thereof.

28. (1) If no person shall, within the period allowed, claim such property, or the proceeds thereof, if sold, it may, if not already sold under

¹See footnote under section 4

²Section 525 of the Code of Criminal Procedure, 1989.

sub-section (2) of of the proceeding section, be sold under the orders of such Magistrate.

(2) The sale proceeds of property sold under the preceding sub-section and the proceeds of property sold under section 27 to which no claim has been established shall be kept in deposit in the State Treasury for a period of two years. If within the above-mentioned period of two years a suit is brought claiming such property or the sale proceeds thereof the order of the Civil Court competent to entertain and determine such suit regarding the disposal of such property or proceeds thereof shall be complied with. If no such suit is brought the deposit shall lapse to and remain at the disposal of Government.

29. Every person having ceased to be an enrolled Police officer under this Act who shall not forthwith deliver up his certificate, and the clothing, accoutrements, appointments and other necessities which shall have been supplied to him for the execution of his duty, shall be liable on conviction before a Magistrate, to a penalty not exceeding two hundred rupees, or to imprisonment for a period not exceeding six months or to both.

30. Every Police officer who shall be guilty of any violation of duty or wilful breach or neglect of any rule or regulation or lawful order made by competent authority, or who shall withdraw from the duties of his office without permission or without having given previous notice for the period of two months, or who, being absent on leave, shall fail, without reasonable cause, to report himself for duty on the expiration of such leave or who shall engage without authority in any employment other than his police duty, or shall be guilty of cowardice, or shall offer any unwarrantable personal violence to any person in his custody shall be liable, on conviction before a Magistrate, to a penalty not exceeding three months' pay or to imprisonment for a period not exceeding three months or to both.

31. (1) The Superintendent or Assistant Superintendent of Police may, as occasion requires, direct the conduct of all assemblies, and processions on the public roads or in the public streets or thoroughfares, and prescribe the routes by which, and the times at which, such processions may pass.

(2) He may also, on being satisfied that it is intended by any persons or class of persons to convene or collect an assembly in any such road, street or thoroughfare or to form a procession which would, in the judgment of the District Magistrate, or of the Sub-Divisional Magistrate, if uncontrolled

be likely to cause a breach of the peace, require by general or special notice that the persons convening or collecting such assembly or directing or promoting such procession shall apply for a licence.

(3) On such application being made, he may issue a licence specifying the names of the licensees and defining the conditions on which alone such assembly or such procession is to be permitted to take place and otherwise giving effect to this section: Provided that no fee shall be charged on the application for, or grant of, any such licence.

(4) He may also regulate the extent to which music may be used in the streets on the occasion of festivals and ceremonies.

Music in streets.

32. (1) Any Magistrate or Superintendent of Police or Assistant Superintendent of Police or Deputy Superintendent of Police or Inspector of Police or any Police officer in charge of a station may stop any procession which violates the conditions of a licence granted under the last foregoing section, and may order it or any assembly which violates any such conditions as aforesaid to disperse.

Powers with regard to assemblies and processions violating conditions of licence.

(2) Any procession or assembly which neglects or refuses to obey any order given under the last preceding sub-section shall be deemed to be an unlawful assembly.

33. It shall be the duty of the Police to keep order on the public roads, and in the public streets, thoroughfares, ghats and landing places and at all other places of public resort, and to prevent obstructions on the occasions of assemblies and processions on the public roads and in the public streets, or in the neighbourhood of places of worship, during the time of public worship and in any case when any road, street, thoroughfare, ghat or landing place may be thronged or may be liable to be obstructed.

Police to keep order in public roads, etc

34. Every person opposing or not obeying the orders issued under the last three preceding sections or violating the conditions of any licence granted by the Superintendent or Assistant Superintendent of Police for the use of music, or for the conduct of assemblies and processions shall be liable, on conviction before a Magistrate, to a fine not exceeding one hundred rupees.

Penalty for disobeying orders issued under last three sections, etc.

35. Nothing in the last four preceding sections shall be deemed to interfere with the general control of the District Magistrate over the matters referred to therein.

Saving of control of District Magistrate.

36. Any person who, on any road or in any open place or street or thoroughfare within the limits of any town to which this section shall be specially extended by ¹[The Government], commits any of the following offences to the obstruction, inconvenience, annoyance, risk, danger or damage of the residents or passengers shall, on conviction before a Magistrate, be liable to a fine not exceeding fifty rupees, or to imprisonment not exceeding 8 days; and it shall be lawful for any Police officer to take into custody, without a warrant, any person who within his view commits any of such offences namely:—

FIRST.—Any person who slaughters any cattle or cleans any carcass; any person who rides or drives any cattle or vehicle recklessly or furiously, or trains or breaks any horse or other cattle:

SECOND.—Any person who wantonly or cruelly beats, abuses or tortures any animal:

THIRD.—Any person who keeps any cattle or conveyance of any kind standing longer than is required for loading or unloading or for taking up or setting down passengers or who leaves any conveyance in such a manner as to cause inconvenience or danger to the public:

FOURTH.—Any person who exposes any goods for sale:

FIFTH.—Any person who throws or lays down any dirt, filth, rubbish or any stones or building materials: or who constructs any cowshed, stable or the like, or who causes any offensive matter to run from any house, factory, dung heap or the like:

SIXTH.—Any person who is found drunk or riotous or who is incapable of taking care of himself:

SEVENTH.—Any person who wilfully and indecently exposes his person, or any offensive deformity or disease, or commits nuisance by easing himself, or by bathing or washing in any tank or reservoir not being a place set apart for that purpose:

EIGHT.—Any person who neglects to fence in or duly to protect any well, tank or other dangerous place or structure.

37. Any charge against a Police officer above the rank of a constable under this Act shall be enquired into and determined only by a Magistrate of first class.

¹See footnote under section 4.

38. Nothing contained in this Act shall be construed to prevent any person from being prosecuted under any other Act or law for any offence made punishable by this Act or from being liable under any other Act or Law at any other or higher penalty or punishment than is provided for such offence by this Act : Provided that no person shall be punished twice for the same offence.

39. Rewards payable by law to informers shall when the information is laid by a Police officer, be paid to the credit of the State under the Head "Police" but rewards payable by law for arrests shall, when the arrest is made by a Police officer, be paid to such officer.

40. When any action of prosecution shall be brought or any proceedings held against any Police officer for any act done by him in such capacity, it shall be lawful for him to plead that such act was done by him under the authority of a warrant issued by a Magistrate.

Such plea shall be proved by the production of a warrant directing the act, and purporting to be signed by such Magistrate and the defendant shall thereupon be entitled to a decree in his favour, notwithstanding any defect of jurisdiction in such Magistrate. No proof of the signature of such Magistrate shall be necessary, unless the Court shall see reason to doubt its being genuine, provided always that any remedy which the party may have against the authority issuing such warrant shall not be affected by anything contained in this section.

41. It shall be the duty of every officer-in-charge of a Police-station to keep a general diary in such form as shall, from time to time, be prescribed by His Highness' Government Jammu and Kashmir, and to record therein all complaints and charges preferred, the names of all persons arrested, the names of the complainants, the offences charged against them, the weapons or property that shall have been taken from their possessions or otherwise, and the names of the witnesses who shall have been examined.

The District Magistrate shall be at liberty to call for and inspect such diary.

42. ¹[the Government,] may direct the submission of such returns by the Inspector General and other Police officers as may be deemed advisable and may prescribe the Form in which such returns shall be made.

His Highness' Government Jammu and Kashmir may prescribe form of returns.

¹ See footnote under section 4.

43. (1) This Act shall not by its own operation take effect in any Province or place. But ¹[the Government] by an order to be published in the Jammu and Kashmir Government Gazette may extend the whole or any part of this Act to any Province or place, and the whole or such portion of this Act as shall be specified in such order, shall thereupon take effect in such Province or place.—

Scope of Act.

(2) When the whole or any part of this Act shall have been so extended ¹[the Government] may, from time to time, by notification in the Jammu and Kashmir Government Gazette, make rules consistent with this Act :

(a) to regulate the procedure to be followed by Magistrates and Police officers in the discharge of any duty imposed upon them by or under this Act ;—

(b) to prescribe the time, manner and conditions within and under which claims for compensation under section 16 are to be made, the particulars to be stated in such claims, the manner in which the same are to be verified and the proceedings (including local enquiries if necessary) which are to be taken consequent thereon ; and

(c) generally, for giving effect to the provisions of this Act.

(3) All rules made under this Act may from time to time be amended, added to or cancelled by ¹[the Government].

44. It shall be lawful for the ¹[the Government] in carrying this Act, into effect in any part of the State to declare that any authority which now is or may be exercised by the District Magistrate over any village watchman or other village Police officer for the purposes of police, shall be exercised, subject to the general control of the District Magistrate by the Superintendent of Police.

Authority of Superintendent of Police over village Police.

FORM.

(See Section 9.)

A. B. has been appointed a member of the police force under Act II of 1983 and is vested with the powers, functions and privileges of a Police officer.

¹See footnote under section 4

THE STATE SUBJECT DEFINITION NOTIFICATION.

DATED, THE 20TH APRIL, 1927.

No. 1-L/84.—The following definition of the term "State Subject" has been sanctioned by His Highness the Maharaja Bahadur (*vide* Private Secretary's letter No. 2354, dated, the 31st January, 1927, to the Revenue Member of Council) and is hereby promulgated for general information:—

The term "State Subject" means and includes:—

CLASS I.—All persons born and residing within the State before the commencement of the reign of His Highness the late Maharaja Gulab Singh Sahib Bahadur, and also persons who settled therein before the commencement of Samvat year 1942, and have since been permanently residing therein.

CLASS II.—All persons other than those belonging to Class I who settled within the State before the close of Samvat year 1968, and have since permanently resided and acquired immovable property therein.

CLASS III.—All persons, other than those belonging to Classes I and II permanently residing within the State, who have acquired under a *rayatnama* any immovable property therein or who may hereafter acquire such property under an *ijazatnama* and may execute a *rayatnama* after ten years' continuous residence therein.

¹[CLASS IV.—Companies which have been registered as such within the State and which, being companies in which the Government are financially interested or as to the economic benefit to the State or to the financial stability of which the Government are satisfied, have by a special order of His Highness been declared to be State Subjects.]

NOTE I.—In matter of grants of State Scholarships, State lands for agricultural and house building purposes and recruitment to State Service, State Subjects of Class I should receive preference over other classes and those of Class II, over Class III, subject, however, to the order dated 31st January 1927, of His Highness the Maharaja Bahadur regarding employment of hereditary State Subjects in Government service.

NOTE II.—The descendants of the persons who have secured the status of any Class of the State Subjects will be entitled to become the State Subjects of the same Class. For example

¹Class IV and Note IV added *vide* order No. 98-H/39, published in Government Gazette dated 27th Poh, 1996. By the same order His Highness is further pleased to direct that, notwithstanding any law, rule or other order to the contrary, no disability as regards acquisition of any interest in land or other immovable property in the State shall attach to a company which is a State subject within the meaning of Notification No. 1-L/84, dated 20th April 1927 as amended.

if A is declared a State Subject of Class II his sons and grandsons will *ipso facto* acquire the status of the same Class (II) and not of Class I.

¹NOTE III.—The wife or a widow of a State Subject of any Class shall acquire the status of her husband as State Subject of the same Class as her husband, so long as she resides in the State and does not leave the State for permanent residence outside the State.

²[NOTE IV.—For the purposes of the interpretation of the term 'State Subject' either with reference to any law for the time being in force or otherwise, the definition given in this Notification as amended up to date shall be read as if such amended definition existed in this Notification as originally issued.]

RULE FOR THE GRANT OF IJAZATNAMA.

COUNCIL ORDER No. 804 OF 1935.

An *ijazatnama* under class 3 of the definition of the term State Subject may be granted in the following form:—

WHEREAS (name).....son of.....caste
.....residence permanent/present.....has
applied that he may be permitted to purchase residential house
situated in.....city/town or *qasba*.....
the Council has been pleased to sanction the above application.
Accordingly this *ijazatnama* is granted to enable the said applicant to acquire property (for) residential (purposes) subject to the conditions noted on the reverse of this *ijazatnama*.

SIGNATURE OF OFFICER GRANTING *ijazatnama*.

DATED Samvat

19 .

N. B.—After ten years continuous residence in the State if the applicant wishes to become a State Subject he will apply to the Wazir Wazarat of the district for grant of a State Subject certificate.

CONDITIONS.

(1) The person who is granted an *ijazatnama* and the residential property acquired by him shall be subject to laws and

¹NOTE III added vide Notification No 51-D/1989 as amended by Notification No. 6-L/1990 published in Government Gazette dated the 8th Paishakh 1990 and Government Gazette dated the 23rd Bhadon 1990 respectively.

²See footnote under Class IV.

Regulations of Jammu and Kashmir Government for the time being in force.

(2) The person in whose favour this *ijazatnama* is granted shall be subject to the jurisdiction of the Criminal, Civil and Revenue Courts of Jammu and Kashmir Government.

(3) If the person in whose favour the *ijazatnama* is granted fails to submit the details of the property acquired and its site plan within 6 months from the date of the receipt of the *ijazatnama* he shall have to apply for renewal of the *ijazatnama* without which his deed will not be registered.

(4) Whoever is granted *ijazatnama* under these rules shall be bound to acquire State Subject certificate after 10 years. In case of failure to acquire this certificate the property acquired by him under the *ijazatnama* shall be liable to be forfeited to the Government.

If the person to whom an *ijazatnama* was granted or his successor in interest has failed to acquire a State Subject certificate at the end of 10 years, he will be at liberty to transfer the property to a State Subject within six months of the end of the period of 10 years and in such a case there will be no forfeiture.

NOTIFICATION.

DATED SRINAGAR, THE 27TH JUNE 1932/14TH HAR 1989.

[*Published in the Government Gazette dated 24th Har, 1989.*]

No. 13-L/1989.—Whereas it is necessary to determine the status of Jammu and Kashmir State Subjects in foreign territories and to inform the Governments of Foreign States as to the position of their nationals in this State, it is hereby commanded and notified for public information, as follows:—

1. That all emigrants from the Jammu and Kashmir State to foreign territories shall be considered State Subjects and also the descendants of these emigrants born abroad for two generations:

Provided that these nationals of the Jammu and Kashmir State shall not be entitled to claim the internal rights granted to subjects of this State by the laws and rules for the time being in force in this State unless they fulfil the conditions laid down by those laws and rules for the specific purposes mentioned therein.

2. The foreign nationals residing in the State of Jammu and Kashmir shall not acquire the nationality of the Jammu

and Kashmir State until after the age of 18 on purchasing immovable property under permission of an *ijazatnama* and on obtaining a *rayatnama* after ten years' continuous residence in the Jammu and Kashmir State as laid down in Notification No. 1-L of 1984, dated 20th April 1927.

3. Certificates of nationality of the Jammu and Kashmir State may, on application, be granted by the Minister-in-charge of the Political Department in accordance with the provisions of section 1 of this Notification.

(Sd.) HARISINGH

MAHARAJA,

G.C.I.E., K.C.V.O.

THE INFANT MARRIAGES PREVENTION ACT, 1985.

Act No. 1 of 1985.

CONTENTS.

Preamble.

SECTION.

1. Short Title.
- Extent and Commencement.
- Exemptions.
2. Definitions.
3. Punishment for marrying an infant girl.
4. Punishment for causing infant marriage.

SECTION.

5. Punishment for an old man marrying an infant girl.
6. Punishment for causing marriage of an infant girl with an old man.
7. Omitted.
8. Court competent to try offences under the Act.

THE INFANT MARRIAGES PREVENTION ACT, 1985.**Act No. 1 of 1985.**

[Sanctioned by His Highness the Maharaja Bahadur under endorsement No. 2265, dated the 22nd May 1928 and No. 304, dated the 14th June 1928 from the Secretary to the Cabinet.]

An Act to prevent infant Marriages in the dominions of His Highness the Maharaja Bahadur of Jammu and Kashmir.

Preamble. WHEREAS it is expedient to prevent infant marriages in the Dominions of His Highness the Maharaja Bahadur of Jammu and Kashmir; His Highness is pleased to enact as follows:—

Short Title. 1. (1) This Act may be called "The Infant Marriages Prevention Act, 1985."

Extent and Commencement. (2) It shall extend to the whole of the State of Jammu and Kashmir and shall be brought into force from first Bhadon, 1985.

Exemptions (3) His Highness may, by notification in the Jammu and Kashmir Government Gazette, exempt any community or class of persons or any class of marriages from all or any of the provisions of this Act.

Definitions. 2. For the purposes of this Act,—

(1) "infant girl" means a girl who has not completed fourteen years of age;

(2) "infant boy" means a boy who has not completed eighteen years of age; and

(3) "infant marriage" means the marriage of an infant girl or of an infant boy or between an infant girl and an infant boy.

Punishment for marrying an infant girl. 3. Any man who having completed eighteen years of age marries an infant girl shall be punished with simple imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees or with both.

Punishment for causing infant marriage. 4. Any person who causes the marriage of an infant girl or of an infant boy, or who knowingly aids and abets within the meaning of the ¹Ranbir Dand Bidhi such a marriage, shall be punished with simple imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees or with both.

EXCEPTION.—The bride and the bridegroom are not liable to punishment under this section.

5. Any man who having completed fifty years of age marries an infant girl shall be punished with imprisonment of either description for a term which may extend to four years or with fine which may extend to two thousand rupees, or with both.

Punishment for an old man marrying an infant girl.

6. Any person who causes the marriage of an infant girl with a man who has completed fifty years of age or who knowingly aids and abets within the meaning of the ¹Ranbir Dand Bidhi such a marriage, shall be punished with imprisonment of either description for a term which may extend to four years or with fine which may extend to two thousand rupees or with both.

Punishment for causing marriage of an infant girl with an old man.

EXCEPTION.—The bride is not liable to punishment under this section.

²**7.** Omitted.

8. No Court inferior to that of a Magistrate of the First Class shall try any offence punishable under this Act.

Court competent to try offences under the Act.

THE JAMMU AND KASHMIR VACCINATION ACT, 1985.

Act No. II of 1985.

CONTENTS.

Preamble.

SECTION.

1. Short Title.

Extent.

2. Interpretation clause.

3. Prohibition of Inoculation.

4. Vaccination circles.

Vaccinators.

SECTION.

Superintendent of Vaccination.

5. Private Vaccinators.

6. Unprotected children to be vaccinated.

Vaccinator to vaccinate children or deliver certificates of postponement.

7. Inspection after vaccination.

¹Ranbir Penal Code.

²Section 7 omitted by Act 11 of 1992 (published in Government Gazette dated the 13th Mar 1992) which was to take effect from the date of enforcement of the Infant Marriage Prevention Act No. I of 1985.

SECTION.

SECTION.

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| 8. Procedure when vaccination is successful. | neglecting to comply with Act. |
| 9. Procedure when vaccination is unsuccessful. | 15. Order by Magistrate when notice not complied with. |
| 10. Procedure when child is unfit for vaccination. | Procedure when order not obeyed. |
| Renewal of certificate of postponement. | 16. Power to make rules for Municipalities. |
| 11. Certificates of insusceptibility of successful vaccination. | 17. Power to make rules for Notified Area etc. |
| 12. What lymph to be used. | 18. Power to make rules for cantonment. |
| 13. No fee to be charged except by private vaccinator. | 19. What rules under sections 16, 17 and 18 may provide for. |
| 14. Duties of Superintendent of Vaccination. | 20. Punishment of Offences. |
| Notice to parent or guardian | 21. Municipal funds to receive fines and meet expenditure. |

THE JAMMU AND KASHMIR VACCINATION ACT, 1985.

Act No. 11 of 1985.

[Sanctioned by His Highness the Maharaja Bahadur vide Development Department Notification No. 780/S, dated the 18th July 1928.]

An Act to give power to prohibit inoculation and to make the vaccination of children compulsory in certain Municipalities, Cantonments and Notified Areas in the Dominions of His Highness the Maharaja Bahadur of Jammu and Kashmir.

Whereas it is expedient to give power to prohibit inoculation and make the vaccination of children compulsory in certain Municipalities, Cantonments and Notified Areas; It is hereby enacted as follows:—

Preamble.

1. This Act may be called "The Jammu and Kashmir Vaccination Act, 1985".

Short Title

Extent.

It shall apply only to such Municipalities, Cantonments and Notified Areas, to which it may be extended by Notification in the Jammu and

Kashmir Government Gazette with the sanction of His Highness.

2. In this Act unless there is something repugnant in Interpretation clause. subject or contest—

(1) The expression “municipal commissioner” means a Municipal Commis- sioner. body of municipal commissioners or a municipal committee constituted under the provisions of any enactment for the time being in force.

(2) “parent” means the father of a legitimate child and the mother of an illegitimate child. Parent,

(3) “guardian” includes any person who has accepted or assumed the care or custody of any child. Guardian,

(4) “unprotected child” means a child who has not been protected from small-pox by having had that disease either naturally or by inoculation, or by having been successfully vaccinated, and who has not been certified under this Act to be insusceptible to vaccination. Unprotected child.

(5) “inoculation” means any operation performed with the object of producing the disease of small-pox in any person by means of variolous matter. Inoculation.

(6) “vaccination circle” means one of the parts into which a Municipality or Cantonment or Notified Area has been divided under this Act for the performance of vaccination. Vaccination circle

(7) “vaccinator” means any vaccinator appointed under this Act to perform the operation of vaccination or any private person authorised in manner hereinafter provided to perform the same operation, and includes a “Superintendent of Vaccination”. Vaccinator.

(8) “vaccination-season” means the period from time to time fixed by the Director of Medical Services, Jammu and Kashmir Government, for any local area by notification in the Jammu and Kashmir Government Gazette during which alone vaccination may be performed under this Act. Vaccination season.

3. In any local area to which the provisions of this Act apply, inoculation should be prohibited. Prohibition of inoculation.

4. Every local area to which this Act applies shall be a vaccination circle, or shall in manner hereinafter provided be divided into a number of such circles. Vaccination circles.

One or more vaccinators shall be appointed in manner hereinafter provided for each such circle; and, Vaccinators.

Superintendent of Vaccination. one or more Superintendents of Vaccination shall be appointed in manner hereinafter provided for each such local area.

Private Vaccinators 5. The Director of Medical Services, Jammu and Kashmir Government, or any other officer authorised by him in this behalf may by written licence authorise private vaccinators to perform vaccination in any vaccination-circle, and may suspend or cancel any such licence.

Unprotected children to be vaccinated. 6. When any unprotected child, having attained the age of 6 months, has resided for a period of one month during the vaccination season in any local area to which the provisions of this Act apply, and has not at the expiration of such period attained the age, if a boy, of fourteen years, and if a girl, of eight years, the parent or guardian of such child shall take it, or cause it to be taken, to a vaccinator to be vaccinated, or send for a vaccinator to vaccinate it.

Vaccinator to vaccinate children or deliver certificates of postponement. Such vaccinator shall vaccinate the child and deliver to its parent or guardian a memorandum stating the date on which the vaccination has been performed and the date on which the child is to be inspected in order to ascertain the result of the operation, or shall, if he finds such child in a state unfit for vaccination, deliver to its parent or guardian a certificate under his hand to the effect that the child is in a state unfit for vaccination for the whole or part of the current vaccination-season.

Inspection after vaccination 7. The parent or guardian of every child which has been vaccinated under section 6 shall, on the date of inspection stated in the memorandum take the child, or cause it to be taken, to a vaccinator for inspection, or get it inspected at his own house by a vaccinator: and such vaccinator shall then append to the memorandum a certificate stating that the child has been inspected and the result of such inspection.

Procedure when vaccination is successful. 8. When it is ascertained at the time of inspecting a child under section 7 that the vaccination has been successful, a certificate shall be delivered by the vaccinator to the parent or guardian of such child to that effect, and such child shall thereafter be deemed to be protected.

Procedure when vaccination is unsuccessful. 9. When it is ascertained as aforesaid that the vaccination has been unsuccessful, the parent or guardian shall, if the vaccinator so direct, cause the child to be forthwith again vac-

nated and subsequently inspected in manner hereinbefore provided.

10. A certificate granted under section 6 showing the unfitness of a child for vaccination shall remain in force for the period stated therein, and on the termination of that period or, if that period terminates after the vaccination season is over, when the next vaccination season begins, the parent or guardian of such child shall take the child, or cause it to be taken, to a vaccinator to be vaccinated, or procure its vaccination at his own house by a vaccinator:

Procedure when child is unfit for Vaccination

Renewal of certificates of postponement

Provided, that, if the child is still found to be in a state unfit for vaccination, the certificate granted under section 6 shall be renewed.

11. If the Superintendent of Vaccination is of opinion that a child which has been three times unsuccessfully vaccinated is insusceptible of successful vaccination, he shall deliver to the parent or guardian of such a child a certificate under his hand to that effect; and the parent or guardian shall thenceforth not be required to cause the child to be vaccinated.

Certificate of Insusceptibility of successful vaccination.

12. The vaccination of a child shall ordinarily be performed with glycerinated animal lymph or such lymph as may be prescribed by the rules to be made under this Act.

What lymph to be used.

13. No fee shall be charged by any vaccinator except a private vaccinator to the parent or guardian of any child for any of the duties imposed on such vaccinator by or under the provisions of this Act.

No fee to be charged except by private vaccinator.

14. The Superintendent of Vaccination, in addition to the other duties imposed on him by or under the provisions of this Act, shall ascertain whether all unprotected children,

Duties of Superintendent of Vaccination.

under the age of fourteen years if boys, and under the age of eight years if girls, within the local area under his superintendence have been vaccinated; and, if he has reason to believe that the parent or guardian of any such child is bound by the provisions hereinbefore contained to procure the vaccination of such child or to present it for inspection, and has omitted so to

Notice to parent or guardian neglecting to comply with Act.

do, he shall personally go or depute a responsible Assistant to go to the house of such parent or guardian, and, there make enquiry and shall, if the fact is proved, forthwith deliver to such parent or guardian, or cause to be affixed to his house, a notice requiring that the child be vac-

minated or (as the case may be) that it be presented for inspection, at a time and place to be specified in such notice.

15. If such notice is not complied with, the Superintendent of Vaccination shall report the matter to the Magistrate of the District or such Magistrate as the Magistrate of the District may from time to time appoint in this behalf; and the Magistrate receiving such report shall summon the parent or guardian of the child and demand his explanation, and shall, if such explanation is not satisfactory, make an order in writing directing such parent or guardian to comply with the notice before a date specified in the order.

Order by Magistrate when notice not complied with.

If on such date the order has not been obeyed, the Magistrate shall summon the parent or guardian before him, and, unless just cause or excuse is shown, shall deal with the disobedience as an offence punishable under section 20.

Procedure when order not obeyed

16. When this Act has been applied to any Municipality or any part thereof, the Municipal Committee may from time to time make rules consistent with this Act for the proper enforcement of this Act within the limit to which it applies. Sub-rules shall be made in the manner in which, under the law for the time being in force, the Municipal Commissioners make rules or bye-laws for the regulation of other matters within the limits of the Municipality, and shall, when confirmed by His Highness and published in the Jammu and Kashmir Gazette have the force of law:

Power to make rules for Municipalities.

Provided that His Highness may at any time rescind or modify any such rule.

17. When this Act has been applied to any Notified Area or any part thereof, His Highness may from time to time make rules consistent with this Act, for the proper enforcement of this Act within the limits to which it applies. Such rules when published in the Jammu and Kashmir Government Gazette, shall have the force of law.

Power to make rules for Notified Area etc

18. When this Act has been applied to any Cantonment or any part thereof, His Highness may, from time to time, make such rules.

Power to make rules for cantonment.

19. The rules to be made for any local area under section 16 or 17 or 18 may, among other matters, provide for:—

What rules under sections 16, 17 and 18 may provide for.

(a) the division of such local area into circles for the performance of vaccination;

(b) the appointment of a place in each vaccination-circle as a public vaccine-station, and the posting of some distinguishing mark in a conspicuous place near such station;

(c) the qualifications to be required of public vaccinators and Superintendent of vaccination;

(d) the authority with which their appointment, suspension and dismissal shall rest;

(e) the time of attendance of public vaccinators at the vaccine-stations, and their residence within the limits of the vaccination-circles.

(f) the distinguishing mark or badge to be worn by them;

(g) the amount of fee chargeable by private vaccinators, and their guidance generally in the performance of their duties;

(h) the facilities to be afforded to people for procuring the vaccination of their children at their own houses;

(i) the grant and form of certificates of successful vaccination, of unfitness for vaccination or of insusceptibility of vaccination;

(j) the nature of the lymph to be used and the supply of a sufficient quantity of such lymph;

(k) the preparation and keeping of registers showing—
the names of children born in such local area on or after the date of the application of this Act;

the names of unprotected children born in such local area previous to the application of this Act, and who are, at the time this Act is applied, under the age of fourteen years if boys, and of eight years if girls;

the names of unprotected boys and girls respectively under those ages brought within such local area at any time after the application of this Act and who have resided there for a month;

the result of each vaccination or its postponement and the delivery of certificates, if any;

(l) the assistance to be given by the Municipal Commissioners and Municipal servants in the preparation of these registers, and in other matters; and

(m) the preparation of vaccination reports and returns.

20. Whoever commits any of the undermentioned offences

Punishment of Offences. (that is to say):—

(a) violates the provisions of section 3;

(b) neglects without just excuse to obey an order made under section 15;

(c) breaks any of the rules made under sections 16 or 17 or 18 or

(d) neglects without just cause to obey an order made under section 15 after having been previously convicted of so neglecting to obey a similar order made in respect of the same child,

shall be punished as follows (that is to say)—

in the case of the offence mentioned in clause (a), with simple imprisonment for a term which may extend to one month or with fine which may extend to one hundred rupees, or with both;

in the case of the offence mentioned in clauses (b) and (c) with fine which may extend to fifty rupees; and,

in the case of the offence mentioned in clause (d) with simple imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees, or with both.

21. The amount of all fees and fines realised, and the amount of all expenditure incurred, under this Act in any Municipality or Notified Area shall respectively be credited to, and paid from the Municipal fund or Notified Area fund.

THE FOOD CONTROL ACT, 1986.

Act No. I of 1986.

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| 1. Title, extent and commencement. | 8. Powers to commandeer stocks of <i>shali</i> or rice. |
| 2. Method of acquisition and distribution of grain. | 9. Penalties. |
| 3. <i>Wad</i> transactions not enforceable. | 10. Penalties under this Act. |
| 4. Advances recoverable as arrears of land revenue. | 10-A. Powers of Director to impose fine. |
| 5. Control of movements within the limits of Kashmir Province. | 10-B. Powers of Director to demand security. |
| 6. Export of <i>shali</i> , rice or maize. | 10-C. Orders of Director final. |
| 7. Declaration of stocks. | 10-D. Penalties. |
| | 11. Constitution of the Board. |
| | 12. Repeal of previous orders. |

THE FOOD CONTROL ACT, 1986.

Act No. I of 1986.

[Sanctioned by His Highness the Maharaja Bahadur vide Minister-in-waiting's endorsement No. 1052-C, dated 29th April 1929.]

WHEREAS it is expedient to consolidate and amend the law relating to Food Control in Kashmir Province; It is hereby enacted as follows:---

Preamble

1. (a) This Act may be called "The Food Control Act 1986".

Title, extent and commencement.

(b) It extends to the whole of the Kashmir Province.

2. The '[Director, Kashmir Valley Food Control], under the control of the '[Government],

Method of acquisition and distribution of grain.

shall continue to make arrangements to purchase *shali* with the object of stabilising prices in the interest of the producer and the consumer in the Kashmir Province. The rates at which *shali* shall be purchased by the '[Director, Kashmir Valley Food Control], through Government agency or by such other agencies as may be employed by the '[Director, Kashmir Valley Food Control], for this purpose, shall be in accordance with the rates '[fixed by the Government with the advice of the Board constituted under the provisions of section II of this Act]. The distribution of *shali* so purchased shall be effected by the '[Director, Kashmir Valley Food Control], who shall work directly under the guidance of the '[Government] or such other officer by whom the Jammu and Kashmir Government may direct the activities of the '[Kashmir Valley Food Control] to be controlled. The profits accruing to the '[Kashmir Valley Food Control] after meeting expenditure incurred in connection with its authorised operations shall be devoted exclusively to the furtherance of the '[Food Control] Scheme in Kashmir, with the approval of '[the Jammu and Kashmir Government.]

¹Substituted for "Manager State Granaries" or "State Granaries" by Revenue Department Notification No 48 published in Government Gazette dated 26th Magher 1987.

²In section 2 "Government" substituted for "Minister-in-charge" vide Act X of 1996 published in Government Gazette dated 15th Badaon 1996.

³Words within brackets in line 10-12 in section 2 substituted for the words "given in the annexure to the Regulation" vide Act No. IX of 1993 published in Government Gazette dated 4th Katik 1993 (E).

⁴Substituted for "Grain Control" by Revenue Department Notification No. 84 published in Government Gazette dated 26th Maghar 1987.

⁵Substituted for "His Highness Maharaja Bahadur" vide Act IX of 1998 published in Government Gazette dated 4th Katik 1993 (Ex).

3. No agreement to repay in the form of agricultural produce any loan advanced in the Kashmir Valley otherwise than by Government agency shall be enforceable.

Wad transaction not enforceable.

4. Advances made by ¹[Kashmir Valley Food Control Department] on account of *shali* shall be recoverable ²[at the rates fixed by the Government with the advice of the Board constituted under the provisions of section II of this Act], as arrears of land revenue where failure to deliver grain necessitates such recoveries being made.

Advances recoverable as arrears of land revenue.

³[5. After consulting the Advisory Board constituted under the provisions of section II of the Act, the Director, Kashmir Valley Food Control, may from time to time subject to the control of the ⁴[Government] by order published in the Jammu and Kashmir Government Gazette and in such other manner, if any, as might be prescribed by the ⁴[Government] prohibit, restrict or control the import into the Municipal limits of the Srinagar City or the transport within the Province of Kashmir of *shali* or rice (including any preparation thereof) by any person or persons without the authority or permission of the said Director.]

⁵[6. *Shali* rice, maize, or any preparation thereof shall not be exported from the Kashmir Province except with the previous permission in writing of the Director, Kashmir Valley Food Control.]

Export of *shali*, rice or maize.

7. (1) The Governor, Kashmir Province or any officer authorised by him in this behalf may by notice in writing require any person to declare within 24 hours of the service of the notice the total stock of any *shali* or rice in his possession or held on his behalf within the province of Kashmir and such person shall be bound to comply accordingly.

Declaration of stocks.

(2) A notice under sub-section (1) shall be deemed to have been served when it is served in the manner provided in the Code of Civil Procedure, 1977, for the service of summonses or when proclaimed by beat of drum or when posted in a conspicuous place in the locality or localities where the stocks are believed to be held.

¹Substituted for "State Granaries" by Revenue Department Notification No. 84 published in Government Gazette dated 26th Maghar 1987.

²Substituted for the words "at the usual authorised rate of recovery" vide Act IX of 1993 published in Government Gazette dated 4th Katik 1993 (Ex).

³Section 5 substituted vide Act IV of 1995 published in Government Gazette dated 10th Har 1995.

⁴In section 5 "Government" substituted for "Minister-in-charge" vide Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

⁵Section 6 substituted by Revenue Department Notification No. 84 published in Government Gazette dated 26th Maghar 1987.

(3) If any attempt is made or apprehended to remove any stock or stocks regarding which action under sub-section (1) has been authorised, the Governor Kashmir Province or any officer authorised by him in his behalf may take all necessary steps to prevent such removal.

(4) If the notice issued under sub-section (1) is not complied with within the prescribed time or if there is reason to doubt the accuracy of any declaration made under this Act the Governor Kashmir Province or any officer authorised by him in this behalf may enter into and search any house, place, tent or vessel believed to contain stock regarding which the notice was issued and served. The provisions of the Code of Criminal Procedure, ¹[1989], shall apply so far as possible to all searches and entries made under this Act.

8. (1) Any person or persons other than an authorised agent of the ²[Director, Kashmir Valley Food Control,] acquiring or holding *shali* or rice or any preparation thereof in excess of the quantity considered sufficient by the Governor Kashmir Province to meet all legitimate household requirements (which shall include the requirements of guests and dependents according to the position of such person) for a period of one year, at any time may be required by notice in writing served in the manner provided in section 7, sub-section (2) by the Governor Kashmir to hand over such surplus *shali* or rice or other preparation thereof to the ²[Director, Kashmir Valley Food Control] or his authorised agents ³[at the price sanctioned by the Government with the advice of the Board constituted under the provisions of section 11 of the Act. Where *shali* or rice or any preparation thereof is commandeered at a place other than a recognized collection centre, the price to be paid shall be the price fixed for the nearest collection centre less nine pies per mile per *kharwar* for each mile of the distance from the nearest collection centre.]

(2) In the event of the person from whom *shali* or rice or other preparation thereof may be thus commandeered refusing to accept payment for the same at the rates ³[sanctioned by the Jammu and Kashmir Government with the advice of the Board constituted under the provisions of this Act] or refusing to give a proper receipt for the payment so made the price due

¹Substituted for "1969" vide Act IX of 1993 published in Government Gazette dated 4th Katik 1993 (Ex)

²Substituted for "State Granaries" by Revenue Department Notification No. 84 published in Government Gazette dated 16th Maghar 1987.

³Substituted by Act IX of 1993 published in Government Gazette dated 4th Katik 1993 (Ex).

shall be deposited with the Tehsildar in whose Tehsil the *shali* or rice was lying at the time it was commandeered. On receipt of such deposit the Tehsildar concerned shall issue a notification through the Government Gazette to the effect that if the amount so deposited is not claimed within a period of six months after publication of the notification the amount shall with the sanction of the Governor Kashmir Province and the concurrence of the '[Director, Kashmir Valley Food Control,] be credited to Government and shall not be refundable unless the claimant can show cause to the Governor Kashmir for not having claimed the amount previously.

²[(3) In calculating the price to be paid for rice commandeered under this Act, ten *traks* rice shall be taken as the equivalent of one *kharwar shali*. *Shali* commandeered within the Srinagar Municipal area shall be paid for at a rate which shall be rupee one below the rate at which the Kashmir Valley Food Control Department is authorised to sell *shali* on the date such grain was commandeered.]

9. Any person who makes a false declaration when called upon under section 7 of this Act to declare his stocks shall be punishable with simple imprisonment for a period not exceeding one year or with fine not exceeding Rs. 1,000 or with both and any *shali* and rice or other preparation thereof found in the possession of such a person or held on his behalf shall be confiscated with the exception of such quantity as may be deemed by the Court to be sufficient to meet all legitimate household requirements of such person for one year.

10. Any person who disobeys any order issued under this Act ³[* * *] or endeavours to defeat its objects or contravenes any provision of this Act in any other way shall be punishable with simple imprisonment for a period not exceeding one year or with fine not exceeding Rs. 1,000 or with both. All offences under this Act shall be triable by a Court not lower in rank than that of a Magistrate of the first class, and shall be cognizable by the Police and not compoundable except with the previous written sanction of the Governor Kashmir.

10-A. The Director, Kashmir Valley Food Control, shall at his discretion impose a fine not exceeding Rs. 50 on a *hanji* and not exceeding Rs. 10 on a *hamal* for any of the following irregularities committed by the *hanji* or *hamal* and he is authorised to recover or remit the fine imposed by

¹See footnote 2 under section 8

²Sub-section (3) added *vide* Act IX of 1993 published in Government Gazette dated 4th Katik 1993 (Ex).

³Words 'or excites or attempts to excite dissatisfaction against this Regulation' omitted by Act IV of 1995 published in Government Gazette dated 10th Har 1995.

⁴Added by Revenue Department Notification No. G-1128/335 dated 12th September, 1932 Published in Government Gazette dated 7th Assuj 1889.

him in any case:—

Irregularities.

- (a) adulteration of grain;
- (b) misbehaviour of any kind resulting in a disturbance;
- (c) misappropriation of grain belonging to the department;
- (d) unauthorised sale of grain belonging to the Department;
- (e) direct dealing with zamindars and ticket-holders,
- (f) short weighments;
- (g) attempt to cheat zamindars who deal with Department;
- (h) non-compliance with any legal order passed by the Director, Kashmir Valley Food Control.

¹**10-B.** The Director, Kashmir Valley Food Control, may at his discretion demand cash security from *hanjis* and *hamals*, before or after they are employed by the department, and may for reasons to be recorded in writing confiscate such security money or any portion thereof.

¹**10-C.** The orders of fine and confiscation of security passed by the Director, Kashmir Valley Food Control, shall be final and shall not be open to any appeal or application for revision to any higher authority.

²**10-D.** Notwithstanding anything said in section 10 above, any *markban* or pony-man found guilty of any of the following irregularities with respect to *shali* committed to their charge by zamindars for delivery to the Kashmir Valley Food Control Department at appointed centres shall be punished on conviction by any Magistrate with a fine not exceeding Rs. 50:—

Irregularities.

- (a) adulteration of grain;
- (b) misbehaviour of any kind resulting in an affray;
- (c) misappropriation of grain belonging to a zamindar;
- (d) unauthorised disposal of grain belonging to a zamindar;
- (e) attempt to cheat a zamindar who entrusts him with *shali* for delivery at Kashmir Valley Food Control Department;

¹ Added by Revenue Department Notification No. G. 1128/355 dated the 12th September 1932 published in Government Gazette, dated the 7th August 1932.

² Added by Revenue Department Notification No. 440/G dated the 18th February, 1993, published in Government Gazette dated the 20th February 1993.

(f) attempt to cheat the staff of the Kashmir Valley Food Control Department responsible for accepting the delivery of *shali* from zamindars.

¹[11. There shall be constituted an Advisory Board to suggest to the Government from time to time a schedule of rates regarding the purchase and sale of *shali* at different *qhats*.
Constitution of the Board

The Board shall consist of seven members. The Revenue Minister and the Director, Food Control, shall be *ex-officio* members of the Board. The remaining five shall be elected by the Praja Sabha from amongst its non-official members belonging to Kashmir Valley. Three shall be from the rural area and two from the city of Srinagar.]

²12. All previous orders and Regulations passed in regard to the control of maize, *shali* and rice and preparation thereof in the Kashmir Province are hereby repealed.
Repeal of previous orders

³ANNEXURE. Repealed.

THE JUVENILE SMOKING ACT, 1986.

Act No. II 1986.

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|--|---|
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| 2. Definitions. | 5. Summary jurisdiction. |
| 3. Penalty on selling tobacco to youthful persons. | |

¹Added vide Act IX of 1993 published in Government Gazette dated 4th Katik 1998 (Ex) Old section 11 renumbered as section 12.

²It was section 11 and was renumbered as section 12 vide Act IX of 1993 published in Government Gazette dated 4th Katik 1998 (Ex).

³Annexure was repealed by Act IX of 1993 published in Government Gazette dated 4th Katik 1998 (Ex.).

THE JUVENILE SMOKING ACT, 1986.**Act No. II of 1986.**

[Sanctioned by His Highness the Maharaja Bahadur vide Minister-in-Waiting's endorsement No. 2050/C, dated 4th July 1929.]

**An Act to provide for the prevention of smoking
by Juveniles.**

Preamble. WHEREAS it is expedient to provide for the prevention of smoking by youthful persons in the Jammu and Kashmir State, His Highness the Maharaja Bahadur, is pleased to enact as follows:—

1. (1) This Act may be called “The Juvenile Smoking Act, 1986”.

(2) It shall extend to the whole of the Jammu and Kashmir State.

(3) It shall come into force on and from the first day of Katik 1986.

2. In this Act unless there is something repugnant in the subject or context:—

Definition.

“tobacco” shall mean tobacco cut or uncut and includes any preparation or mixture of tobacco with other substances for the purpose of smoking or chewing or taking in as snuff.

“public place” means any place to which the public for the time being has access whether on payment or otherwise and includes any conveyance plying for hire.

3. Whoever sells or gives or attempts to sell or give to a person actually and by appearance under the age of 16 years, except on the written order of the parent, guardian or employer of such person any tobacco, shall be liable, on conviction before a Magistrate, in the case of first conviction, to a fine not exceeding twenty rupees, and in the case of second conviction to a fine not exceeding fifty rupees, and in the case of third and every subsequent conviction to a fine not exceeding one hundred rupees.

4. If any boy actually and by appearance under the age of 16 years be found smoking or chewing tobacco or taking it in as snuff, in any public place, it shall be lawful for any lambar-dar, zaildar, teacher of a recognized school or affiliated college, member of a Municipal Committee, member of a Notified Area Committee, legal practitioner, medical practitioner or Magistrate to seize such tobacco and destroy it.

Penalty on selling tobacco to youthful persons.

Seizure of tobacco being consumed by juvenile in a public place.

5. The High Court of Judicature, Jammu and Kashmir State, may confer on any Magistrate power to try summarily any offence under this Act.

THE PRIMARY EDUCATION ACT, 1986.

Act No. III of 1986.

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7. School Attendance Committee.
8. Warning by School Attendance Committee.
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THE PRIMARY EDUCATION ACT, 1986.

Act No. III of 1986.

[Sanctioned by His Highness the Maharaja Bahadur under endorsement No. 937, dated the 16th January, 1930, from the Minister-in-Waiting.]

An Act to make provision for the Compulsory attendance of boys at Primary Schools.

Preamble.

Whereas it is expedient to make provision for the compulsory attendance of boys at Primary Schools; It is hereby enacted as follows:—

Short title, extent and commencement.

(1) This Act may be called the Primary Education Act, 1986.

(2) It shall apply in the first instance to the following towns only within the local limits and from the dates men-

tioned against each, *viz.*—

Names of towns.	Local Limits.	Commencement.
(i) Jammu ..	As notified under the Jammu and Kashmir Municipal Act 1970.	1st Baisakh 1987.
(ii) Srinagar ..	Do.	Do.
¹ (iii) Sopor ^e ..	Do.	Do.
¹ (iv) Mirpur ..	Do.	Do.
¹ (v) Udhampur ..	Do.	Do.

(3) ²[The Government] may by notification extend this Act to any other town or local area specified in such notification.

(4) ²[The Government] may by notification direct that the provisions of this Act shall be read subject to such modifications as may be specified in such notification in their application to any specified town or other local area to which it applies or has been extended.

Definition.

2. In this Act, unless there is something repugnant in the subject or context:—

(1) “parent” includes the guardian and every person who is liable to maintain or has the actual custody of any boy.

(2) “recognised school for Primary Education” means a school or department of a school recognised by the Education Department of His Highness’ Government and imparting instruction in the courses prescribed for Primary Schools by the Education Department of His Highness’ Government.

3. (1) In every area to which this Act applies or has been extended, it shall be the duty of the parent of any boy residing within such area, who is not under six and not over eleven years of age to cause such boy to attend a recognised school for Primary Education unless there be a reasonable excuse for his non-attendance within the meaning of section 4:

Provided that no boy who has completed the course prescribed for the fourth primary standard or a course notified

¹Sopor, Mirpur and Udhampur one new Town Areas under the Town Areas Act.

²In section 1(3) and (4), 3, (2), 7, 10, and 11 the words “the Government” substituted for the words “His Highness” vide Act X of 1996 published in Government Gazette dated 15th Bhadon 1996

by His Highness as equivalent to that standard shall be required to attend such recognised school.

(2) Where under this section it is the duty of the parent of any boy to cause him to attend a recognised school, '[the Government] will prescribe the number of days in each month and the number of hours in each day during which each boy shall be required to attend, and a boy shall not be deemed to have attended school in the meaning of this section, unless he has attended on the days and during the hours so prescribed.

Reasonable ex. use for
non-attendance.

4. Any of the following shall be deemed to be a reasonable excuse for non-attendance:—

(a) that there is no recognised school for Primary Education within a distance of one mile by the nearest route from the residence of the boy;

(b) that the boy has been exempted by the School Attendance Committee on religious grounds;

(c) that the boy is shown to the satisfaction of the School Attendance Committee to be receiving efficient instruction in some other manner;

(d) that the boy has been granted temporary leave of absence from school for sickness or other sufficient reason in accordance with rules made under section 10:

(e) that the boy is shown to the satisfaction of the School Attendance Committee to be permanently unfit to attend school by reason of some bodily defect or infirmity:

5. Any parent who shall neglect to comply with the provision of section 3 shall on conviction by any Magistrate be punishable with a fine not exceeding five rupees.

Penalty for neglect by
parent.

6. Any person other than the parent of such boy who shall during the prescribed hours of attendance at school utilize in connection with any employment, whether for remuneration or not, the services of any boy whose parent is required under section 3 to cause his attendance at school shall on conviction be punishable with a fine not exceeding twenty-five rupees.

Unlawful employment
of a boy.

7. For every town or local area to which this Act applies or has been extended one or more School Attendance Committees shall be constituted in accordance with rules prescribed by '[the Government].

School Attendance
Committee

8. Whenever the School Attendance Committee has reason to believe that the parent of any boy within its area is not causing the boy to attend school in accordance with section 3 or that any person is employing any boy in a manner which constitutes an offence under section 6, it shall warn him to cause the boy to attend school or to discontinue the employment of the boy, as the case may be, within one week after receipt of such warning.

9. No Court shall take cognisance of any offence under section 5 or 6 except upon complaint by the School Attendance Committee and unless a warning under section 8 has been given and not complied with.

10. ¹[The Government] may make rules:—

- (a) generally to carry out the objects of this Act, and
- (b) in particular prescribing
 - (i) the constitution, duties and powers of School Attendance Committees,
 - (ii) the conditions under which leave may be granted to boys under section 4 (d) and the authority competent to grant such leave.

11. ¹[The Government] may by notification exempt particular persons, classes or communities from the operation of this Act.

THE FOREST ACT, 1987.

Act No. II of 1987.

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THE FOREST ACT, 1987.**Act No. II of 1987.**

[Sanctioned by His Highness the Maharaja Bahadur under State Secretary's No. 5806, dated 19th October, 1930.]

An Act to amend and conslitate the law relating to forests and the transit of forest produce.

Preamble. WHEREAS it is expedient to amend and consolidate the law relating to forests and the transit of forest produce ; It is hereby enacted as follows:—

CHAPTER I.**PRELIMINARY.**

1. (i) This Act may be called the Jammu and Kashmir Forest Act, 1987.

Short title.

(ii) It shall come into force on such date as may be specified in this behalf by notification in the Jammu and Kashmir Government Gazette issued under authority of the Minister-in-charge of the Forest Department.

Commencement.

(iii) It shall extend to the whole of the State.

Extent.

(iv) On and from the date on which this Act comes into force, the Regulation, Orders of His Highness the Maharaja Bahadur conveyed in Chief Minister's communications and the State Council Resolutions mentioned in the Schedule hereto annexed shall be repealed, but, all notifications published, declarations and rules made, places appointed, acts done or validated, agreements filed, scales prescribed, forms framed, appointments made, and powers conferred under the said Regulation or any of the said Orders of His Highness the Maharaja Bahadur or the said State Council Resolutions and in force at the date of such repeal shall, so far as they are consistent with this Act, be deemed to have been respectively published, made, appointed, done or validated, filed, prescribed, framed and conferred under this Act and by the authority empowered there-by in such behalf.

Repeal of enactment.

2. In this Act, unless there be something repugnant in the subject or context—

Definitions.

¹["Forest officer" includes the Chief Conservator, Conservators, Deputy and Assistant Conservators, Forest Rangers, Foresters, Forest Guards and any persons whom [the Government] or any officer empowered by [the Government] may from time to time appoint by name or as holding an office to carry out all or any of the purposes of the Forest Act, or to do anything required by this Act or any rule made under this Act to be done by a Forest officer.]

"tree" includes palms, bamboos, stumps, brush-wood and canes;

"timber" includes trees and bamboos when they have fallen or have been felled, and all wood whether cut up or fashioned or hallowed out for any purpose or not;

"forest produce".

"forest produce" includes:—

(a) the following, whether found in or brought from, a forest or not, that is to say:—

cautchus, catechu, wood-oil, resin, natural varnish, bark, lac, mahus flowers and myrabolams, and

(b) the following when found in, or brought from, a forest, that is to say:—

- (i) timber, charcoal, trees and leaves, flowers and fruits and all other parts or produce not herein-before mentioned of trees,
- (ii) plants not being trees (including Kuth, grass, creepers, reeds and moss), and all parts of produce of such plants,
- (iii) wild animals and skins, tusks, horns, bones, silk, cocoons, honey and wax, and all other parts or produce of animals, and
- (iv) peat, surface soil, rock and minerals (including limestone, laterite, mineral oils and all products of mines or quarries);

"forest offence" means an offence punishable under this Act, or under any rule made under this Act;

"cattle" includes elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids;

¹ Definition of "Forest officer" substituted by R. D. Notification No. 11 published in Government Gazette dated 27th March 1990 and in it "the Government" substituted for "His Highness" vide Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

"demarcated forest" means forest land or waste land under the control of the Forest Department, of which the boundaries have already been demarcated by means of, pillars of stone or masonry or by any other conspicuous mark, or, which may hereafter be constituted a demarcated forest under section 3;

"undemarcated forest" means and includes all forest land and waste land (other than demarcated forest and such waste land or forest *berun line* as is under the management and control of the Revenue Department) which is the property of the Government and is not appropriated for any specific purpose;

"river" includes streams, canals, creaks, and other channels, natural or artificial excepting such *kull*s, and channels as are constructed and maintained by the zamindars at their own expense for purposes of irrigation and in regard to which no settlement has been arrived at between the Forest and the Revenue Departments to bring them within this definition.

CHAPTER II.

DEMARCATED FORESTS.

3. (1) ¹[The Government] for purposes may from time to time make rules in accordance with which any forest land or waste land which is the property of Government or over which the Government has proprietary right, or to the whole or any part of the forest produce of which the Government is entitled, may be declared as demarcated forest and may from time to time as the occasion may require amend or cancel such rules :

Provided that nothing in this section shall be deemed to apply to such Government waste land or forest *berun line* as is under the management and control of the Revenue Department.

(2) All rules made under sub-section (1) shall be published in the Jammu and Kashmir Government Gazette.

(3) The revised rules for the demarcation of forests sanctioned by His Highness the Maharaja Bahadur in the Chief

¹In sections 3, 5, 6, 9, 10, 11, 12, 14, 15, 16, 19, 25, 34, 39, 45 and 47 the words "the Government" substituted for the words "His Highness the Maharaja Bahadur" vide Act X of 1996 published in the Government Gazette dated the 15th Bhadon 1996.

Minister's No. 414, dated the 12th March 1924, shall be deemed to have been made under sub-section (1).

(4) On the completion of the demarcation proceedings in accordance with the rules made under sub-section (1) the results of such proceedings for each such forest land or waste land shall be notified in the Jammu and Kashmir Government Gazette in accordance with such rules by the Conservator of the Circle and from the date of such publication such forest or waste land shall be deemed to be a demarcated forest.

4. The management of the demarcated forests (except where such forests have been placed authoritatively under the control and management of any other Department or local authority) is vested in the Forest Department.

The control and management of demarcated forests not in charge of the Forest Department shall be vested in such officer as the Government may, by notification, prescribe, in this behalf and such officer may by like notification be invested with all or any of the powers and liabilities of a Forest officer under this Act.

5. ¹[The Government] may from time to time make rules to regulate the exercise of concessions in demarcated forests and may prescribe the limits upto which closures to concessions may be permitted and the procedure to be adopted when closures are to be effected.

6. Any person who—

(a) sets fire to a demarcated forest, or kindles any fires, or leaves any fire burning in such manner as to endanger such a forest;

or who in a demarcated forest—

(b) kindles, keeps or carries any fire except at such seasons as the Conservator of the Circle may from time to time notify in this behalf;

(c) causes any damage by negligence in felling any tree or cutting or dragging any timber;

(d) fells, girdles, lops, taps, or burns any tree, or strips off the bark or leaves from, or otherwise damages, the same;

(e) quarries stone, burns lime or charcoal or collects, subject to any manufacturing process, or removes, any forest produce;

(f) clears or breaks up any land ²[or erects a fence or enclosure] for cultivation or any other purpose;

¹ See footnote under section 3.

² Words within brackets added vide Notification 24-L/1989, Act XIII of 1989 published in Government Gazette dated 3rd Bhadon 1989.

(g) in contravention of any rules which ¹[the Government] may from time to time in the Jammu and Kashmir Government Gazette prescribe, hunts, shoots, fishes, poisons water, or sets traps or snares;

(h) in such forest or part thereof duly declared to be closed by competent authority trespasses cattle or pastures cattle, or permits cattle to trespass; or

(i) removes or damages the utensils, lips, nails or other articles, fixed to trees for the collection of resin; shall be punished with imprisonment of either description for a term which may extend to one month or with fine not exceeding one hundred rupees or with both in addition to such compensation for damage done to the forest as the convicting Court may direct to be paid. Nothing in this section shall be deemed to prohibit—

(a) any act done by permission in writing of a Forest officer, or under any rule made by ¹[the Government]; or

(b) the exercise of any right created by grant or contract in writing or concession, made by or on behalf of ¹[the Government].

7. Whenever, in a demarcated forest, fire is caused wilfully or by gross negligence, or trees are felled or killed repeatedly without permission, the Chief Conservator may (notwithstanding that any penalty has been inflicted under section 6) direct that in such forest or any portion thereof the exercise of all or any rights or concessions or privileges of pasture or to forest produce shall be suspended for a period not exceeding two years : Provided that the order of the Chief Conservator, in so far as it concerns the restriction of any right, concession or privilege other than the removal of fallen timber, shall be subject to the previous approval of the ²[Government]: Provided also that the cutting of grass and the collection of fuel shall not be suspended without the approval of the ²[Government].

8. Whenever, during the period of suspension of any rights, concessions or privileges, under the last preceding section, fire or damage to trees is proved to have been caused wilfully and persistently in any demarcated forest, the Chief Conservator shall have a written warning served through the zaildar and lambardars on all or any of the villages enjoying rights, concessions or privileges in such forest. Should such warning remain unheeded, the Chief Conservator may,

¹See footnote under section 3.

²In section 7 word "Government" substituted at two places for some words vide Act X of 1996 published in Government Gazette dated the 15th Bhadon 1996.

with the concurrence of the Governor of the Province, inflict a collective fine on such village or villages, limited in amount to one year's land revenue of the village or villages concerned, provided that in the case of disagreement between the Governor and the Chief Conservator of Forests the fine shall be subject to confirmation by the ¹[Government].

Any fines imposed under this section shall be recoverable as arrears of land revenue.

9. ²[The Government] may by notification in the Jammu and Kashmir Government Gazette declare that from a date fixed by such notification any demarcated forest or any portion thereof shall cease to be a demarcated forest, and from the date so fixed, such forest, or a portion shall cease to be demarcated.

Power to declare forest no longer demarcated.

CHAPTER III.

UNDEMARCATED FORESTS.

10. The management of the undemarcated forests (except where such forests have been placed authoritatively under the control and management of any other Department or local authority) is vested in the Forest Department.

The control and management of undemarcated forests not in charge of the Forest Department shall be vested in such officer as ¹[the Government] may, by notification in the Jammu and Kashmir Government Gazette, prescribe in this behalf and such officer may by like notification be invested with all or any of the powers and liabilities of a Forest officer under this Act.

11. ²[The Government] may from time to time, by notification, in the Jammu and Kashmir Government Gazette—

Power to issue notification.

(a) declare any class of trees in an undemarcated forest or any trees in any such forest, to be reserved from a date fixed by such notification;

(b) prohibit, from a date fixed as aforesaid the quarrying of stone, or the burning lime or charcoal, or the collection or subjection to any manufacturing process, or, removal of any forest produce, in any such forest, and the breaking up or

¹In section 8 "Government" substituted for "Revenue Minister, His Highness' Government" vide Act X of 1996 published in Government Gazette dated the 15th Bhadon 1996.

² See footnote under section 3.

clearing for cultivation, for building, for herding cattle, or for any other purpose, any land in any such forest; and

(c) alter or cancel such declaration or prohibition.

12. ¹[The Government] may from time to time make

Power to make rules for undemarcated forests. rules to regulate the following matters:—

(a) the sale and removal of trees and forest produce from the undemarcated forests;

(b) the protection and management of the undemarcated forests; and

(c) the exercise of concessions in undemarcated forests.

Penalties for acts prohibited in undemarcated forests

13. Any person who commits any of the following offences:—

(a) fells, girdles, lops, taps or burns any tree reserved under section 11, or strips off the bark or leaves from, or otherwise damages any such tree;

(b) contrary to any prohibition under section 11 quarries any stone, burns any lime or charcoal, or collects, subjects to any manufacturing process, or removes, any forest produce;

(c) contrary to any prohibition under section 11 breaks up or clears for cultivation or any other purpose any land in any undemarcated forest;

(d) sets fire to such forest or kindles any fires, or leaves any fire burning in such a manner as to endanger such forest;

(e) removes or damages the utensils, lips, nails or other articles fixed to trees for the collection of resin; and

(f) infringes any rules made under section 12; shall be punished with imprisonment of either description for a term which may extend to one month, or with fine not exceeding one hundred rupees, or with both in addition to such compensation for damage done to the forest as the convicting Court may direct to be paid.

14. Nothing in this chapter shall be deemed to prohibit

Nothing in this chapter to prohibit acts done in certain cases.

any act done with the permission in writing of the Forest officer, or in accordance with any rule made by ¹[the Government], or in the exercise of any right created by grant or contract, or concession made by or on behalf of ¹[the Government].

¹See footnote under section 3.

¹[CHAPTER III-A.

OF VILLAGE FORESTS.

14-A. His Highness the Maharaja Bahadur may from time to time assign to any village community the rights of Government to or over any land which has been entered in Settlement records as *Khalsa* land and may cancel such assignment. All lands so assigned and to be turned into forests shall be called village forests.

His Highness the Maharaja Bahadur may from time to time make rules for regulating the management of village forests prescribing the conditions under which the village community to which any such assignment is made may be provided with timber or other forest produce or pasture and their duties for the protection and improvements of such forests.

All provisions of this Act relating to demarcated forests shall (so far as they are consistent with the rules so made) apply to village forests.]

CHAPTER IV.

CONTROL OF TIMBER AND OTHER FOREST PRODUCE IN TRANSIT.

15. The control of all rivers and their banks as regards the floating of timber, as well as the control of all timber and other forest produce in transit by land or water is vested in ²[the Government] who may from time to time make rules to regulate the transit of all timber and other forest produce. Such rules may (among other matters):—

(a) prescribe the route by which alone timber or other forest produce may be imported, exported or moved into, from or within the State;

(b) prohibit the import and export or moving of such timber or other produce without a pass from an officer duly authorised to issue the same, or otherwise than in accordance with the conditions of such pass;

(c) provide for the issue, production and return of such passes and for the payment of fees therefor;

(d) provide for the stoppage, reporting examination and marking of timber or other forest produce in transit, in

¹Chapter III-A, section 14-A added by Revenue Department Notification No. 54, dated 13th March, 1934.

²See footnote under section 3.

respect of which there is reason to believe that any money is payable to State on account of the price thereof, or on account of any duty, fee, royalty or charge due thereon, or to which it is desirable for the purposes of this Act to affix a mark;

(e) provide for the establishment and regulation of depots to which such timber or other produce shall be taken by those in charge of it for examination, or for the payment of such money, or, in order that such marks may be affixed to it; and the conditions under which such timber or other produce shall be brought to, stored at and removed from such depots;

(f) prohibit the closing up or obstructing of the channel or banks of any river used for the transit of timber or other forest produce, and the throwing of grass, brush-wood, branches and leaves into any such river, or any act which may cause such river to be closed or obstructed;

(g) provide for the prevention and removal of any obstruction of the channel or banks of any such river and for recovering the cost of such prevention or removal from the person whose acts or negligence necessitated the same;

(h) prohibit absolutely or subject to conditions within specified local limits the establishment of saw-pits, the converting, cutting, burning, concealing or marking of timber, the altering or effacing of any marks on the same, and the possession or carrying of marking hammers or other implements used for marking timber;

(i) regulate the use of property-marks for timber and the registration of such marks, prescribe the time for which such registration shall hold good, limit the number of such marks that may be registered by any one person, and provide for the levy of fees for such registration.

¹[The Government] may direct that any rule made under this section shall not apply to any specified class of timber or other forest produce of any specified local area.

16. ¹[The Government] may, by such rules as are made under section 15, prescribe as penalties for the infringement thereof, imprisonment for a term which may extend to 6 months, or fine which may extend to five hundred rupees, or both.

17. The Government shall not be responsible for any loss or damage which may occur in respect of any timber or other forest produce while at a depot established under a rule made under section 15, or while detained elsewhere for the purposes of this Act and

Penalty for breach of rules made under section 15.

Government and Forest officer not responsible for damage to forest produce at depot.

¹See footnote under section 8.

no Forest officer shall be responsible for any such loss or damage unless he causes such loss or damage negligently, maliciously or fraudulently.

18. In case of any accident or emergency involving danger to any property, at any such depot, every person employed at such depot, whether by the Government or by any private person, shall render assistance to any Forest officer or public officer demanding his aid in averting such danger and securing such property from damage or loss.

All persons bound to aid in case of accident at depot

CHAPTER V.

COLLECTIONS OF DRIFT AND STRANDED TIMBER.

Certain kinds of timber to be deemed property of Government until title thereto proved and may be collected accordingly

19. (a) All timber found adrift, beached, stranded or sunk,

(b) all wood or timber bearing marks which have not been registered under section 15, or on which the marks have been obliterated, altered or defaced by fire or otherwise, and

(c) in such areas as ¹[the Government] may direct all unmarked wood and timber, shall be deemed to be the property of Government unless and until any person establishes his right and title thereto as provided in this chapter.

Such timber may be collected by any Forest officer or other person entitled to collect the same by virtue of any rule made under section 25 and may be brought to such depots as the Forest officer may from time to time notify as depots for the reception of drift timber.

¹[The Government] may, by notification in the Jammu and Kashmir Government Gazette, exempt any class of timber from the provisions of this section.

20. Public notice shall from time to time be given, by the Forest officer, of timber collected under section 19. Such notice shall contain a description of the timber, and shall require any person claiming the same to present to such officer, within a period not less than two months from the date of such notice, a written statement of such claim.

Notice to claimants of drift timber.

¹See footnote under section 3.

21. When any such statement is presented as aforesaid, the Forest officer may, after making such enquiry as he thinks fit, either reject the claim after recording his reason for so doing, or deliver the timber to claimant.

If such timber is claimed by more than one person the Forest officer may either deliver the same to any of such persons whom he deems entitled thereto, or may refer the claimants to the Civil Courts, and retain the timber pending the precept of an order from any such Court for its disposal.

Any person whose claim has been rejected under this section, may, within three months from the date of such rejection, institute a suit to recover possession of the timber claimed by him, but no person shall recover any compensation or costs against the Government or against any Forest officer on account of such rejection, or the detention or removal of any timber, or the delivery thereof to any other person under this section.

No such timber shall be subject to process of any Civil, Criminal, or Revenue Court until it has been delivered or a suit has been brought, as provided in this section.

22. If no such statement is presented as aforesaid, or if the claimant omits to prefer his claim in the manner and within the period prescribed by the notice issued under section 20 or, on such claim having been so preferred by him and having been rejected, omits to institute a suit to recover possession of such timber within the further period limited by section 21, the ownership of such timber shall vest in the Government, or, when such timber has been delivered to another person under section 21 in such other person, free from all incumbrances not created by him.

23. The Government shall not be responsible for any loss or damage which may occur in respect of any timber collected under section 19, and no Forest officer shall be responsible for any such loss or damage unless he causes such loss or damage negligently, maliciously or fraudulently.

24. No person shall be entitled to recover possession of any timber collected or delivered as aforesaid until he has paid to the Forest officer or other person entitled to receive it, such sum on account thereof as may be due under any rule made in pursuance of section 25.

25. ¹[The Government] may from time to time make rules to regulate the following matters
Powers to make rules and prescribe penalties. namely:—

(a) the salving, collection and disposal of all timber mentioned in section 19;

(b) the use and registration of boats used in salving and collecting timber;

(c) the amounts to be paid for salving, collecting, moving, storing and disposing of such timber;

(d) the use and registration of hammers and other instruments to be used for marking such timber.

¹[The Government] may from time to time prescribe, as penalties for the infringement of any rules made under this section, imprisonment for a term which may extend to 6 months, or fine which may extend to five hundred rupees, or both.

CHAPTER VI.

PENALTIES AND PROCEDURE.

26. When there is reason to believe that a forest offence has been committed in respect of any forest produce, such produce, together with all tools, boats, carts and cattle used in committing any such offence, may be seized by any Forest or Police officer.

Seizure of property liable to confiscation. Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized, and shall as soon as may be, make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.

Application for confiscation. Provided that when the forest produce with respect to which such offence is believed to have been committed is the property of Government, and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior.

27. Upon the receipt of any such report the Magistrate shall, with all convenient despatch, take such measures as may be necessary for the arrest and trial of the offender and the disposal of the property according to law.

28. All timber or forest produce which is not the property of the Government and in respect of which a forest offence has been committed, and all tools, boats, carts and cattle
Forest produce, tools &c., when liable to confiscation.

¹ See footnote under section 3.

used in committing any forest offence shall be liable to confiscation.

Such confiscation may be in addition to any other punishment prescribed for such offence.

29. When the trial of any forest offence is concluded, any forest produce in respect of which such offence has been committed shall, if it is the property of the Government or has been confiscated, be taken charge of by a Forest officer, and in any other case may be disposed of in such manner as the Court may direct.

Disposal on conclusion of trial for forest offence of produce in respect of which it was committed

30. When the offender is not known or cannot be found, the Magistrate may, if he finds that an offence has been committed, order the property in respect of which the offence has been committed to be confiscated and taken charge of by the Forest officer, or to be made over to the person whom the Magistrate deems to be entitled to the same:

Procedure when the offender is not known or cannot be found.

Provided that no such order shall be made until the expiration of one month from the date of seizing such property, or without hearing the person (if any) claiming any right thereto, and the evidence (if any) which he may produce in support of his claim.

31. The Magistrate may, notwithstanding anything hereinbefore contained, direct the sale of any property seized under section 26 and subject to speedy and natural decay, and may deal with the proceeds as he would have dealt with such property if it had not been sold.

Procedure as to perishable property seized under section 26.

32. The officer who made the seizure under section 26 or any of his official superiors or any person claiming to be interested in the property so seized, may, within the period ordinarily allowed for appeals from the orders of such Magistrate, appeal from any orders passed under section 28, 29 or 30 to the Court to which orders made by such Magistrate are ordinarily appealable, and the order passed on such appeal shall or shall not be final according to law relating to Criminal Procedure for the time being in force in the State.

Appeal from orders under sections 28, 29, 30.

33. When an order for the confiscation of any property has been passed under section 28 or 30 as the case may be, and the period limited by section 32 for an appeal from such order has elapsed and no such appeal has been preferred, or when on such an appeal being preferred the appellate Court confirms such order in respect of the whole or a portion of such

Property when to vest in State

property, such property or such portion thereof as the case may be, shall vest in the Government free from all incumbrances.

34. Nothing hereinbefore contained shall be deemed to prevent any officer empowered in this behalf by ^{Saving of power to release property seized.} '[the Government] from directing at any time the immediate release of any property seized under section 28.

35. Whoever, with intent to cause damage or injury to the public or to any person, or to cause wrongful gain as defined in the 'Ranbir Dand Bidhi:—

(a) knowingly counterfeits upon any timber or standing tree a mark used by Forest officers to indicate that such timber or tree is the property of Government, or of some person or that it may lawfully be cut or removed by some person; or

^{Penalty for counterfeiting or defacing marks on trees and timber and for altering boundary marks.}

(b) alters, defaces or obliterates any such marks placed on a tree or on timber by or under the authority of a Forest officer; or

(c) alters, moves, destroys, or defaces, any boundary mark of any forest or waste land to which the provisions of this Act are applicable; shall be punished with imprisonment of either description for a term which may extend to 6 months, or with fine not exceeding five hundred rupees, or with both.

36. Any Forest officer or Police officer may without orders from a Magistrate and without a warrant, ^{Power to arrest without warrant.} arrest any person against whom a reasonable suspicion exists of his having been concerned in any forest offence punishable with imprisonment.

Every officer making an arrest under this section shall without unnecessary delay take or send the person arrested before the Magistrate having jurisdiction in the case, or to the officer in charge of the nearest Police-station.

37. Every Forest officer and Police officer shall prevent, and may interfere for the purpose of preventing the commission of any forest offence. ^{Power to prevent commission of offence.}

38. (1) ¹[The Government] may from time to time by notification in the Jammu and Kashmir Government Gazette, empower a Forest officer by name, or as holding an office:—

(a) to accept from any person against whom a reasonable suspicion exists, that he has committed any forest offence other than an offence specified in section 35 or section 43

^{Power to compound offences.}

¹See footnote under section 3.

²Ranbir Penal Code.

a sum of money by way of compensation for the offence which such person is suspected to have committed, and

(b) when any property has been seized as liable to confiscation, to release the same on payment of the value thereof as estimated by such officer.

(2) On the payment of such sum of money, or such value or both, as the case may be, to such officer, the suspected person if in custody, shall be discharged, the property, if any, seized shall be released, and no further proceedings shall be taken against such person or property.

(3) A Forest officer shall not be empowered under this section unless he is a Forest officer of a rank not inferior to that of a Ranger and the sum of money accepted as compensation under sub-section (1) clause (a) shall in no case exceed the sum of fifty rupees and where the case is compounded by a Forest officer of the rank of Ranger, shall in no case exceed the sum of twenty five rupees.

39. When in any proceedings taken under this Act or in consequence of anything done under this Act a question arises as to whether any forest produce is the property of the Government, such produce shall be presumed to be the property of the Government until the contrary is proved.

Presumption that the
Forest produce belongs to
Government

CHAPTER VII.

CATTLE TRESPASS.

40. Cattle trespassing in any portion of a demarcated forest which has been lawfully closed to grazing shall be deemed to be cattle doing damage to a public plantation within the meaning of the 11th section of the Cattle Trespass Act, 1977, and may be seized and impounded as such by any Forest or Police officer.

Cattle trespass

CHAPTER VIII.

FOREST OFFICERS.

41. The following powers are conferred upon the Chief Conservator, Conservators and officers in charge of Forest Divisions:—

Powers conferred under
this Act.

(a) The powers of a Civil Court to compel the attendance of witnesses and the production of documents in cases relating to forest offence.

(b) The power to hold an enquiry into forest offences and in the course of such enquiry to receive and record evidence. Any evidence so recorded shall be admissible in any subsequent trial before a Magistrate, provided that it has been taken in the presence of the accused person.

42. All Forest officers shall be deemed to be public servants within the meaning of the ²Ranbir Dand Bidhi.

No suit shall lie against any public servant for anything ^{Indemnity for act done} done by him in good faith under this Act. _{in good faith.}

43. Any Forest officer or Police officer who vexatiously and unnecessarily arrests any person or detains any person when arrested or seizes any property on pretence of seizing property liable to confiscation under this Act, shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to five hundred rupees or with both.

44. Except with the permission in writing of the Minister in charge of the Forest Department, ^{Forest officer not to trade.} His Highness' Government, Jammu and Kashmir, no Forest officer shall as principal or agent trade in timber or other forest produce or be or become interested in any lease of any forest or in any contract for working any forest whether in the State or in foreign territory.

CHAPTER IX.

SUBSIDIARY RULES.

45. ^{Additional powers to make rules.} ¹[The Government] may from time to time make rules:—

(a) to prescribe and limit the powers and duties of any officer under this Act;

(b) to regulate the rewards to be paid to officers and informers out of the proceeds of fines and confiscations under this Act;

(c) for the preservation, reproduction and disposal of trees and timber belonging to Government but grown on lands belonging to or in the occupation of private persons; and

(d) generally, to carry out the provisions of this Act.

¹See footnote under section 8.

²Ranbir Penal Code.

46. Any person breaking any rule under this Act for the breach of which no special penalty is provided, shall be punished with imprisonment for a term which may extend to one month, or fine which may extend to one hundred rupees, or both.

Penalties for breach of rules.

47. All rules made by '[the Government] under this Act shall be published in the Jammu and Kashmir Government Gazette and shall thereupon so far as they are consistent with this Act have the force of law.

Rules when to have force of law

CHAPTER X.

MISCELLANEOUS.

48. Every person who exercises any right or enjoys any concession or privilege in a demarcated or undemarcated forest, or who is permitted to take any forest produce from, or to cut and remove timber or to pasture cattle in such forest, and

Persons bound to assist Forest and Police officers.

every person who is employed by any such person in such forest ¹[or within five miles of its boundry and]

every person in any village ²[within five miles radius of such forest] who is employed by the Government, or

who receives emoluments from the Government for services to be performed to the community, shall be bound to furnish without unnecessary delay to the nearest Forest officer or Police officer any information he may possess respecting the commission of, or intention to commit, any forest offence, and shall assist any Forest officer or Police officer—

(a) in extinguishing any fire occurring in such forest;

(b) in preventing any fire, which may occur in the vicinity of such forest from spreading to such forest; and shall assist any Forest officer or Police officer demanding his aid;

(c) in preventing the commission in such forests of any forest offence; and

(d) when there is reason to believe that any such offence has been committed in such forest, in discovering and arresting the offender.

¹See footnote under section 3.

²Inserted by R. D Notification No 21 dated 18th May, 1933 published Government Gazette dated 19th Jeth 1990.

49. Any person who wilfully neglects to give information or to render assistance, which he is bound to give or render under section 48 shall be liable, on conviction by a Magistrate of the 1st Class to fine not exceeding Rs. 100 or in default of payment of such fine to simple imprisonment for a term not exceeding six months.

Penalties for non-compliance

50. If in any case under clauses (a) and (b) of section 48 it appears to the Wazir Wazarat of the district within which the forest concerned is situated after local enquiry made in a summary and administrative manner, either by himself, or through a Tehsildar deputed by him for the purpose, that any such person or village or other community has neglected to give such information or to render such assistance as is required thereby, he may impose a fine not exceeding Rs. 100 on, as well as direct payment of compensation for damage to Government property by, such person, village or other community or such individual member of such village or other community as may be determined in consultation with the Divisional Forest Officer.

Summary action by Wazir Wazarat in fire cases

All fines imposed under this section shall be recoverable as arrears of land revenue.

51. An appeal against every order passed under section 50 may be made to the Governor of the Province whose decision shall be final.

Appeals against order of Wazir Wazarat.

52. All money payable to the Government under this Act or under any rule made under this Act or on account of the price of any forest produce, or of expenses incurred in the execution of this Act in respect of such produce, may, if not paid when due, be recovered under the law for the time being in force as if it were an arrear of land revenue.

Recovery of money due.

53. When any such money is payable for or in respect of any produce, the amount thereof shall be deemed to be a first charge on such produce and such produce may be taken possession of by a Forest officer until such amount has been paid.

Lien on forest produce for such money

54. If such amount is not paid when due, the Forest officer, in charge of the Division may sell such produce by public auction and the proceeds of the sale shall be applied first in discharging such amount.

Power to sell such produce

The surplus (if any) if not claimed within six months from the date of the sale by the person entitled thereto shall be forfeited to Government.

SCHEDULE.

See section (iv).

Enactments repealed.

No. and year of Resolution or Regulations.	Title.	Extent of repeal.
Forest Regulation of 1970	.. A Regulation to provide for the preservation and management of demarcated, partially demarcated or undemarcated forests in the Jammu and Kashmir State.	.. The whole.
Chief Ministers No. 547/H. 27/9 ³ , dated 17th May 1914	Amendment to Forest Regulation of 1970	.. "
" No. 6548, dated 12th January 1916	" "	.. "
" No. 12439, dated 18th March 1919	" "	.. "
" No. 6431/F. M., dated 17th August 1920 <u>133/1918</u>	" "	.. "
" No. 5972/C. XII-8, dated 10th August 1921	" "	.. "
State Council Resolution No. CLXIII, dated 30th June 1924	" "	.. "

NOTIFICATION NO. 46.

(Published in the Government Gazette dated 7th Poh, 1990).

His Highness the Maharaja Bahadur has been pleased to sanction (*vide* the Hon'ble Prime Minister's endorsement No. G. B. 269, dated 13th December 1933) the issue of the following paragraph under section 15 of the Forest Act *vide* page 7 of the Forest Law Manual:—

To regulate the work of realising boom fees as sanctioned under Chief Minister's No. 8769 dated 27th September 1921, the river position between Owen to Bela Bahadur Shah (in which *mahan* of timber is carried out every year departmentally during the boom season) is notified as Boom Zone under section 15, Forest Act No. II of 1987, for such *mahans* during the Boon season at the following sanctioned rates:—

Beam	3 pies
Sleeper	1½ pie.
Tota	1 pie.

THE FOREST (SALE OF TIMBER) ACT, 1987.

Act No. III of 1987.

CONTENTS.

SECTION.	SECTION.
1. Short title, extent and commencement.	4. Application of chapter VI of Jammu and Kashmir Forest Act No. II of 1987.
2. Meaning of terms.	5. Indemnity for acts done in good faith.
3. Power to make rules regulating sale of timber and establishment of sale depots.	

THE FOREST (SALE OF TIMBER) ACT, 1987.**Act No. III of 1987.****CONTENTS.****SECTION.**

1. Short title, extent and commencement.
2. Jammu and Kashmir Forest Act No. II of 1987.
3. Power to make rules regulating sale of timber and the establishment of sale depots.

SECTION.

4. Jammu and Kashmir Forest Act No. II of 1987. Application of chapter VI of Jammu Kashmir Forest Act.
5. Indemnity for acts done in good faith.

THE FOREST (SALE OF TIMBER) ACT, 1987.**Act No. III of 1987.**

[Sanctioned by His Highness the Maharaja Bahadur vide Cabinet Secretary's endorsement No. 2966, dated the 25th February 1931.]

An Act to provide for the control of the sale of timber and the establishment of sale depots for such timber in the Jammu and Kashmir State.

WHEREAS it is expedient to provide for the control of the sale of timber and establishment of sale depots for such timber in the Jammu and Kashmir State; It is hereby enacted as follows:—

1. This Act may be called the Jammu and Kashmir Forest (Sale of Timber) Act No. III of 1987.
Short title, extent and commencement.

It shall extend to such local areas as the Jammu and Kashmir Government may by notification in the Jammu and Kashmir Government Gazette direct and it shall come into force in each of such areas on such day as the Jammu and Kashmir Government in like manner direct in this behalf.

2. In this Act all expressions shall have the meaning assigned to them in the Jammu and Kashmir Forest Act No. II of 1987.
Jammu and Kashmir Forest Act No. II of 1987.

3. (1) The Jammu and Kashmir Government may by notification in the Jammu and Kashmir Government Gazette, make rules to regulate the sale of timber and the establishment of sale depots for such timber.
Power to make rules regulating sale of timber and the establishment of sale depots.

Such rules may among other matters—

(a) prescribe the classes of timber to which the rules shall apply;

(b) define what shall be deemed to be a sale depot;

(c) provide for the establishment, registration, regulation and inspection of sale depots, and the levy of fees for registration; prescribe the period for which registration shall hold good and the conditions under which timber may be brought to, stored at, sold at, and removed from, sale depots; and prohibit the sale of timber at or the establishment or maintenance of unregistered sale depots;

(a) regulate the use of sale depot marks and the registration of such marks; prescribe the time for which registration shall hold good; and provide for the levy of fees for registration;

(e) prescribe the registers to be maintained at sale depots, and provide for the production of such registers before and for their examination by any Forest or Police officer authorised in this behalf by the Divisional Forest Officer or by the District Superintendent of Police, respectively;

(f) prescribe as penalties for the infringement of any rule made under this section imprisonment which may extend to six months or fine which may extend to Rs. 500 or both. Double penalties may be inflicted where the offence is committed after sunset and before sunrise, or after preparation for resistance to lawful authority, or if the offender has been previously convicted of a like offence.

(2) All rules made under sub-section (1) shall be so made after previous publication in the Jammu and Kashmir Government Gazette.

4. The provision of chapter VI of the Jammu and Kashmir Forest Act No. 2 of 1987 with the exception of section 38, shall apply so far as may be to any infringement of the rules made under this Act as if such infringement were a forest offence under the Jammu and Kashmir Forest Act.

5. No suit shall lie against any public servant for any thing done by him in good faith under this Act.

JURISDICTION OF STATE COURTS OVER BRITISH SUBJECTS, ETC.

Copy of a letter No. D-3256/30 dated the 6th June 1930, from Lieutenant Colonel G. D. Ogilvie, C. I. E., Resident in Kashmir, to the Foreign and Political Minister, Jammu and Kashmir Government, Srinagar.

Shortly after assuming charge of this Residency I examined the question of the Civil and Criminal Jurisdiction exercised by the Resident in Kashmir and his Assistants and submitted

to the Government of India the following proposals:—

(1) that the Kashmir Government should be permitted in future to exercise full criminal jurisdiction over all Indian Visitors including Indian servants of European British subjects, and

(2) that the Kashmir Government should be permitted to exercise full civil jurisdiction over all persons in Kashmir irrespective of their nationality.

2. In view of the improvements effected in the Judicial administration of the State, the Government of India have been pleased to accept my proposals and I have been instructed to inform His Highness' Government that in supersession of the arrangement indicated in paragraph 4 of Colonel Prideaux's letter No. 1098, dated the 27th April 1891, the Government of India have decided that in criminal matters, only persons specified in the undermentioned categories will in future be normally tried by the Residency Courts:—

(a) European British subjects as defined in section 4 of the Code of Criminal Procedure,

(b) Americans and Japanese,

(c) European of any nationality other than British;

(d) British subjects accused of having committed offences conjointly with European British subjects.

All other categories of persons who have hitherto been tried by the Residency Courts will normally be tried by the State Courts, on the understanding that the Government of India reserve to themselves the general right to claim the trial of such persons if and when circumstances should appear to warrant such action. This reservation is intended to cover:—

(a) Indian British subjects, whether visiting Kashmir or permanently residing therein, and

(b) Government servants, whether British subjects or not and whether visiting Kashmir or permanently stationed therein,

and is a usual reservation applying in all other Indian States also.

3. The arrangement detailed above will also extend to the Gilgit Wazarat of the Kashmir State where the Political Agent Gilgit and his Assistants exercise similar powers, on the understanding that no change is made in the arrangements whereby the Political Agent Gilgit and the Assistant Political Agent, Chilas, exercise the powers of a District Magistrate in the Political District of Chilas, Ghizor, Koh, Yasin and Ashkoman and hence also are Deputy Commissioners for the purpose of the Frontier Crimes Regulation.

4. The Government of India contemplate no change in regard to the exercise of jurisdiction over soldiers of Indian

Army who commit offences in an Indian State while on duty.

5. The changes referred to in paragraph 2 above will not be introduced by means of any formal notification or announcement other than this letter.

Extract from a letter No. 1098, dated the 27th April 1891, from Colonel Prideaux, Resident in Kashmir, to the Vice-President of the Jammu and Kashmir State Council.

I am directed by His Excellency the Viceroy and Governor General in Council to communicate for the information of the Kashmir State Council the following observations regarding the arrangements which the Government of India consider necessary for the exercise of Criminal and Civil jurisdiction within the territories of His Highness the Maharaja of Jammu and Kashmir.

2. The Government of India consider that the Regulations published with the assent of His Highness the late Maharaja in Foreign Department Notification No. 615-P, dated the 28th May 1873 are not entirely suited to the present time. Since the publication of those Regulations considerable changes have been effected in His Highness' territories, and year by year the number of persons visiting Kashmir increases, and the opening of Jhelum Valley Road will doubtless attract more and more British capital into the Valley of Kashmir. On the other hand the Government of India are glad to notice that there has been considerable improvement of late, in the machinery for the administration of justice in Jammu and Kashmir, and that if the State Council continue to devote attention to this important question, it is believed that the Courts of the State will in time command the confidence of the general public.

3. Inasmuch as the Governor General in Council possesses full personal jurisdiction over subjects of Her Majesty who may happen to be within the territories of the Maharaja it would not ordinarily be necessary to pause before issuing such orders concerning them as might appear from time to time to be necessary. But the existing Regulations having been published with the assent of the late Maharaja and therefore out of courtesy to His Highness the present Maharaja and the Kashmir State Council the Government of India have desired me to communicate to the Council their intention of making alterations, suitable to the existing conditions, in the present procedure.

4. The changes that will be made are embodied in the accompanying Notifications and may be summarised as follows:—

* * * * *

DRAFT NOTIFICATIONS.

I. In exercise of the powers conferred by section 6 of the Foreign Jurisdiction and Extradition Act 1879, the Governor General in Council is pleased:—

(a) to appoint every officer for the time being holding the office of Resident in Kashmir or of Assistant to the Resident in Kashmir being an European British subject, to be a Justice of the Peace within the territories of His Highness the Maharaja of Jammu and Kashmir, and

(b) to direct that Justice of the Peace within the said territories shall commit for trial to the Chief Court of the Punjab.

II. Whereas the Governor General in Council has in certain cases jurisdiction within the territories of His Highness the Maharaja of Jammu and Kashmir; In exercise of this jurisdiction and of the powers conferred by sections 4 and 5 of the Foreign Jurisdiction and Extradition Act, 1879, and of all other powers enabling him in this behalf, the Governor General in Council is pleased to issue the following orders with respect to such cases:—

PART I.

CRIMINAL JUSTICE.

For the purposes of the exercise within the said territories of Criminal Jurisdiction in such cases as aforeasaid:—

1. Every Assistant to the Resident in Kashmir for the time being may exercise the powers of a District Magistrate and of a Court of Session as described in the Code of the Criminal Procedure, 1882.

2. The Resident in Kashmir for the time being shall exercise the powers of a Court of Session and High Court as described in the said Code in respect of all offences over which Magisterial jurisdiction is exercised by any of his Assistants, provided that such Assistant shall commit any accused person for trial to the Resident acting as a Court of the Session.

3. The Resident in Kashmir for the time being shall exercise the powers of a High Court as described in the said Code in respect of all offences over which the jurisdiction of a Court of Session is exercised by any such Assistant, except that,

in cases in which the said Code requires the sentence of a Court of Session to be confirmed by the High Court, the sentence shall be referred for confirmation to the Governor General in Council instead of to the Resident.

4. In the exercise of the jurisdiction of a Court of Session conferred on him by these orders, an Assistant may take cognizance of any offence as a Court of Original Criminal Jurisdiction without the accused person being committed to him by a Magistrate, and shall, when so taking cognizance of any offence, follow the procedure laid down by the Code of Criminal Procedure 1882, for the trial of warrant cases by Magistrates.

5. A trial before an Assistant in the exercise of the jurisdiction of a Court of Session conferred on him by these orders may be without jury or aid of assessors.

6. This part of these orders applies to all proceedings except:—

- (a) proceedings against European British subjects or British subjects jointly charged with European British subjects; and
- (b) proceedings pending at the date of this Notification which should be carried on as if this Notification had not been issued.

PART II.

CIVIL JUSTICE.

For the purpose of the exercise within the said territories of Civil Jurisdiction in such cases as aforesaid—

1. Every Assistant to the Resident in Kashmir for the time being may exercise the powers of a District Court as described in the Code of Civil Procedure, with jurisdiction in all original suits whatever be the amount or value of the subject-matter and in all other proceedings in which jurisdiction is conferred on the District Court by the Law for the time being in force.

2. Every Assistant to the Resident in Kashmir for the time being may exercise the powers of a Court of Small Causes, with jurisdiction in all suits cognizable under the Provincial Small Cause Court Act 1887, when the amount or value of the subject-matter does not exceed one thousand rupees.

3. Appeals shall lie, subject to the Law for the time being in force, to the Resident in Kashmir, from the decrees or orders of an Assistant, and the Resident shall exercise the powers of a High Court.

PART III.

LAWS.

1. The provisions, so far as they can be made applicable in the circumstances for the time being, and as amended for the time being by subsequent enactments, of the Acts specified in the Schedule to this Notification, are, for the purposes of such cases as aforesaid, hereby applied to the said territories.

2. Such portion of Foreign Department Notification No. 605/P dated 28th March 1873 as are inconsistent with these orders are hereby cancelled.

SCHEDULES.

ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

I. Criminal.

Act XVIII of 1850 (Protection of Judicial Officers).
Act XLV of 1860 (Penal Code).
Act VI of 1864 (Whipping).
Act I of 1872 (Evidence).
Act X of 1882 (Criminal Procedure).

II. Civil.

Act X of 1865 (Succession).
Act XIV of 1865 (Post Office).
Act VII of 1870 (Court Fees).
Act IX of 1872 (Contract).
Act XV of 1877 (Limitation).
Act V of 1881 (Probate and Administration).
Act XIV of 1882 (Civil Procedure).
Act XIII of 1885 (Telegraphs).
Act VI of 1888 (Debtors).
Act IX of 1887 (Provincial Small Cause Court).
Act VII of 1889 (Succession Certificate).

Extract from Proceedings of a Meeting of the Jammu and Kashmir State Council held at Srinagar on Monday the 7th September 1891, at 12 A. M.

Read Raja Amar Singh's letter No. 1784 dated 5th September 1891, giving cover to Resident's letter No. 2575 dated 8th ultimo enquiring whether the Council have recorded their assent to the stipulations required by the Government of India, on the subject of the exercise of Civil and Criminal jurisdiction within the territories of His Highness the Maharaja of Jammu and Kashmir.

Resolved that a reply be sent in the affirmative.

JURISDICTION OF STATE COURTS OVER SOLDIERS OF INDIAN ARMY.

CIRCULAR NO. 38.

Copy of Resolution No. 15 dated 21st August, 1905, of the Jammu and Kashmir State Council.

Read, Judicial Member's Memo. dated 13th June 1905 to the effect, that under the authority of State Council 'Resolution No. 8, dated 28th December 1904 a circular has been issued by him for the guidance of Criminal Courts in the State in respect of their jurisdiction over native officers and soldiers of the British Army; and that the Assistant Resident in Kashmir (letter No. 2913, dated 22nd May 1905) has now communicated to the Darbar, the observations of the Government of India in respect of the correct procedure to be followed by the Criminal Courts of the Native States with regard to the following cases which were referred to the Government of India by the Mysore Darbar:—

(a) When a native soldier of the Indian Army commits within a Native State, while not on leave, an offence which does not subject him to arrest;

(b) When a native soldier of the Indian Army commits within the State, while on leave, an offence which does not subject him to arrest;

(c) When a native soldier of the Indian Army commits within the State, while not on leave, an offence which does subject him to arrest;

(d) Whether an offence previously committed in a Native State (ii *supra*) means an offence committed by such soldier when not on leave or when on leave; and

(e) What steps a Native State could take when the offence referred to under (d) is not included in the Schedule to the Indian Extradition Act.

The observations of the Government of India are that as regards (a) the Courts of Native States have no jurisdiction over a native officer or soldier of the Indian Army who, while not on leave, commits any kind of offence within their territories.

As regards (b) the native officer or soldier, who, while on leave in a Native State, commits an offence of any kind against the law of such State, is amenable to the jurisdiction of the State Courts.

As to case (c) the offender may be arrested by the State authority in any case in which the law of the State permits of such arrest, but that he should be handed over forthwith to the nearest Military authority.

With reference to (d) the words "an offence committed by him in the State on some previous occasion" [para 2 (2) *supra*] may be interpreted in their broadest sense, the meaning of the phrase not being restricted to offences committed while on leave. The jurisdiction of the Native State Courts will not, however, extend to the case of a native officer, who has been charged with an offence previously committed while on duty, and who has already been tried and either acquitted or punished by the British authorities for such an offence.

As regards (e) the Government of India are prepared to waive the restriction imposed by the words "provided that the offence so committed is one of those entered in the Schedule to the Indian Extradition Act" [para 2(2) *supra*].

In submitting the papers to Council, Judicial Member would ask that he may be authorised to issue Circular order for the guidance and information of the Criminal Courts in the State in accordance with the above observations of the Government of India (No. 1412-J, dated 20th June 1905).

15. RESOLVED—

That the Judicial Member be authorised to issue a Circular order for the guidance and information of the Criminal Tribunals of the State in conformity with the observations of the Government of India.

AMENDMENT OF RESOLUTION NO. 15 DATED 21ST AUGUST, 1905.

HIDAYAT NO. 13.

Regarding amendment of Resolution No. 15 dated 21st August, 1905 for the guidance of State Courts in respect of their jurisdiction over native officers and soldiers of the British Army, sanctioned by His Highness vide Chief Minister's letter No. 2404 dated 26th June, 1907.

As regards (a) the Courts of Native States are not, except where jurisdiction may be specially conceded, permitted to exercise jurisdiction over a native officer or soldier of the Indian Army who, while not on leave, commits any kind of offence within their territories.

As regards (b) the native officer or soldier, who, while on leave in a Native State, commits an offence of any kind against the law of such State, is amenable to the jurisdiction of the State Courts.

As to case (c) provided that the circumstances are not such as to allow of immediate arrest by the Military authorities, the offender may be arrested by State authority in any case in which the law of the State permits of such arrest, but he should be handed over forthwith to the nearest Military authority. Should the Political Officer for the State consider it desirable, for any special reason, that the offender should be tried by the Durbar Courts, he may request the Military authorities either to deliver over the accused to the Durbar for trial, or to postpone proceedings pending a reference to the Governor General in Council. The Military authorities, on receiving such a request, should either deliver over the offender or forthwith refer the question as to the Court before which the proceedings are to be instituted, for the decision of the Governor General in Council.

With reference to (d) the words "an offence committed by him in that State on some previous occasion" [paragraph 2 (2) *supra*] may be interpreted in their broadest sense, the meaning of the phrase not being restricted to offences committed while on leave. The jurisdiction of the Native State Courts will not, however, extend to the case of a native soldier, who has been charged with an offence previously committed while on duty, and who has already been tried and either acquitted or punished by the British authorities for such offence.

As regards (e) the Government of India are prepared to waive the restriction imposed by the words "provided that the offence so committed is one of those entered in the schedule

to the Indian Extradition Act" (paragraph 2 (ii) *supra*).

In order to promote the ends of justice and to meet the convenience of officials or subjects of the Durbar whose attendance may be necessary at the trial of a native officer or soldier of the Indian Army, who may have committed an offence within the territories of a Native State, the Military authorities will arrange that in such cases whenever the exigencies of Military service permit, the offender shall be tried at the cantonment nearest to the place where the offence was committed.

APPENDIX.

Extract from Proceedings of a Meeting No. 73 of the Jammu and Kashmir State Council held at Srinagar on the 28th December 1904.

Read again Resolution No. 5 dated 24th June 1892 in which Residency letter No. 2408 dated 15th June 1892 conveying the decision of the Government of India relating to the jurisdiction of Native States under Extradition Act over any Native officer or soldiers of the British Army is cited.

Read also Assistant Resident's letter No. 5969 dated 23rd October 1904 to the Vice-President stating that a case recently occurred in which owing to a misapprehension on the part of the Political Officer no objection was raised by him to the trial of a native soldier of the Indian Army by the Courts of a Native State for the offence of rioting committed while on duty in the State, that the man was convicted and underwent a portion of his sentence but the matter came to the notice of the Government of India and the Political Officer was requested to move the Durbar to quash the proceedings that this was eventually done and the offender handed over to a Military Tribunal.

The Assistant Resident goes on to say that a case having lately occurred in which one of the State Courts summoned a native soldier of the Indian Army to appear in Court and answer to a criminal charge preferred against him by some Kashmir State subjects.

Under the circumstances he observes that the Resident at the instance of the Imperial Government would have the rule cited in the above quoted Resolution strictly followed.

In conclusion he adds that it should if considered necessary be clearly explained to all Criminal Courts of the State that their jurisdiction over native officers and soldiers of the British Army should be strictly and exclusively limited to the

following cases:—

1. When a Native soldier *while on leave* within the State commits an offence which renders his subject to arrest;
OR

2. When a Native soldier *while on leave* within the State is arrested for an offence committed by him in the State on some previous occasion provided that the offence so committed is one of those entered in the schedule of the Extradition Act.

Referred to Council by the Vice-President with the remark that the comparison of the conditions mentioned in the previous and recent letter alluded to above shows that the words "on leave" in condition No. 2 as originally proposed did not occur in the sentence (No. 5453 dated 15th November 1904).

On the papers being referred to the Judicial Member that officer states that nothing is necessary beyond issuing a circular informing all Courts that processes can not be issued against native soldiers of the British Army except under the cases sanctioned in the letter.

8. Resolved—That the Judicial Member be requested to issue the necessary circular for the guidance and information of the State Tribunals.

THE SPECIAL PROCEDURE NOTIFICATION FOR CERTAIN OFFENCES.

Notification No. 13-L of 23rd June 1931.

WHEREAS it is desirable that offences relating to sedition and those against regulations for the conduct of public meetings and those connected with the public peace should be tried expeditiously; It is hereby commanded as follows:—

1. Any offences under section 124-A of the Indian Penal Code ¹[120-B of the Ranbir Dand Bidhi] ²[* * *] shall be triable by the Sessions Judge ¹[without commitment] and by no other Court inferior to the Court of the Sessions Judge, without the aid of jury or assessors.

2. From any order of conviction or acquittal passed by the Sessions Judge in any prosecution in accordance with

¹Words within brackets in section 1 added *vide* Notification No. 14-L/1938 published in Government Gazette dated 25th Mar 1938. Note.—Corresponding section of Ranbir Penal Code is 153-A.

²Words "the Jammu and Kashmir State Criminal Law Amendment Regulation 1971, Regulation for the Prevention of Seditious Meetings, 1971 and Notifications No. 2-L and 3-L of 19th July, 1927 (procedure prescribed in these Regulations and Notifications notwithstanding)" deleted from section 1 *vide* Regulation No. 10 of 1905 published in Government Gazette dated 21st Bhadon 1905 (Ext.).

this Notification, there shall be permitted one appeal to the High Court which shall be heard by a Bench of two or more Judges, and the judgment of the Special Bench of the High Court shall be final, subject to 'section 23(a) of Order No. 1 of 26th March 1928 constituting the High Court of Judicature, Jammu and Kashmir State.

3. The procedure prescribed in this Notification shall have retrospective effect also for the trial of offences described in section 1 committed on and after 1st May 1931.

4. If during a trial, in accordance with the procedure prescribed in this Notification, the Sessions Judge or Bench of the High Court is of opinion that the trial should be held in camera and the admission of the public prohibited, the Judge, with the previous permission of the Chief Justice, or the Bench may pass an order prohibiting the public from entrance in the Court room and notifying the particular persons besides the accused, who would be permitted to be present during the trial.

SRINAGAR:

(Sd.) HARISINGH,

23rd June, 1931.

MAHARAJA.

THE SPECIAL POWERS NOTIFICATION, 1988.

Notification No. 19/L of 1988.

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THE SPECIAL POWERS NOTIFICATION, 1988.

¹Notification No. 19-L, dated 8th Assuj 1988/24th September 1931.

WHEREAS an emergency has arisen which makes it necessary to provide for the conferment of special powers upon certain of my officers for the suppression of disorder and the restoration and maintenance of law and order; I hereby

¹This Notification was withdrawn by Notification No. 20-L, 1988; but subsequently by Notification No. 2 L/1990, Notification No. 20-L/1988 was cancelled and this Notification was revived.

command as follows:—

CHAPTER I.

1. (a) This notification shall extend for the present to the city of Srinagar within the Municipal limits and shall come into operation immediately.

Preliminary.

¹(b) It may be extended to any other area within my rule by a notification.

Definitions

2. Under this notification—

(a) “the Code” means the ²Code of Criminal Procedure of Samvat 1969.

(b) “A turbulent person” includes any person who has committed an offence punishable under section 121, 121-A, 122 or 123, of the Ranbir Penal Code or against whom operations are being carried out by my Military forces or the Police for the purpose of restoring and maintaining law and order in any area to which this notification extends.

CHAPTER II.

3. (1) A competent authority may arrest without warrant any person against whom a reasonable suspicion exists that he has promoted or assisted to promote or intends to promote disaffection against the authority of Government or that he has acted or intends to act in a manner prejudiced to the restoration or maintenance of law and order.

Power to arrest turbulent persons.

(2) In making such arrest a competent authority may use any means that may be necessary.

(3) A competent authority making such arrest shall forthwith commit any person so arrested to Jail in Srinagar:

Provided that no person shall be detained in custody under this section for a period exceeding one month.

4. (1) A competent authority, if satisfied that there are reasonable grounds for believing that any person has promoted or assisted to promote or intends to promote disaffection against the authority of Government, or that he has assisted or intends to assist any disaffected person, or has otherwise acted or intends to act in

Power to control turbulent persons.

¹ Extended to the City of Jammu by notification No. L-3 of 1990 to the *qasba* of Anantnag (area in which land is permitted to be mortgaged and sold) and to the village of Sarnal by Notification No. L-4 of 1990; to the village of Mastan, Bij Rihara and Pulwaga by Notification No. 15-L/1990; and to the villages of Baramulla and Sopore by Notification No. 16-L/1990.

² Code of Criminal Procedure (Act XXI of 1989).

a manner prejudicial to the restoration or maintenance of law and order may, by order in writing, direct that such person:—

(a) shall not enter, reside or remain in any area specified in the order ;

(b) shall reside or remain in any area specified in the order ;

(c) shall remove himself from, and shall not return to, any area specified in the order ; or

(d) shall conduct himself in such manner, abstain from such acts, or take such order with any property in his possession or under his control as may be specified in the order.

(2) An order made under sub-section (1) shall not remain in force for more than one month from the making thereof.

(3) An order made under sub-section (1) shall be served on the person to whom it relates in the manner provided in the Code for service of a summons.

5. A competent authority may appoint persons as Special Police Officers, and any person so appointed shall be deemed to have been appointed as a Special Police Officer in accordance with the provisions of any enactment relating to the appointment of special Police in force in the area in which he is appointed.

6. A competent authority may require any person to assist in the restoration or maintenance of law and order, or maintenance of law and order, in such manner and within such limits as the competent authority may prescribe.

7. (1) Where in the opinion of a competent authority such action is expedient in the furtherance of any operation being carried out by my Military forces or the Police for the restoration or maintenance of law and order or the protection of property, such competent authority may, after recording an order in writing stating his reasons:—

(a) take possession of any land, and construct Military works, including roads thereon and remove any trees, hedges, crops and defences therefrom ;

(b) take possession of any land or buildings, together with any property thereon, whether movable or immovable, including works for the supply of electricity or water and any source of water supply ;

(c) take such steps as may be expedient for placing any lands, buildings or structures in a state of defence ;

(d) cause any buildings, structures, trees, hedges, crops, or other property of any kind to be destroyed or removed ; and

(e) do any other act involving interference with private rights in property.

(2) If, in the opinion of a competent authority, any land or building can be utilised as quarters or offices for public servants, or for the accommodation of troops, Police or prisoners, the competent authority may, by order in writing, require the occupier or other person in charge of the land or building to place it at the disposal of the Government at such times as may be specified in the order, together with the whole or any part specified in the order of any fixtures, fittings, furniture or other things for the time being in the building or on the land; and the competent authority may dispose of or use such land, building, fixtures, fittings, furniture or other things in such manner as it may consider expedient.

(3) In this section "building" includes any portion or portions of a building whether separately occupied or not.

(4) The District Magistrate may, on the application of any person who has suffered loss by the exercise of the powers conferred by this section, award to such person such compensation as he thinks reasonable, and such award shall be final.

8. (1) If, in the opinion of a competent authority, any product, article or thing can be utilised for the public advantage, the competent authority may, by order in writing, require any owner or person in charge of such product, article or thing to place it at the disposal of Government at such time and place as may be specified in the order; and the competent authority may dispose of or use it in such manner as it may consider expedient.

(2) The District Magistrate may, on the application of any person who has suffered loss by the exercise of the power conferred by sub-section (1) award to such person such compensation as he thinks reasonable, and such award shall be final.

9. (1) A competent authority may, by order in writing, published in such manner as he thinks best adapted for informing the persons concerned:—

(a) prohibit, either absolutely or subject to such exceptions as may be specified in the order, the purchase, sale or delivery of, or other dealing in, any arms, parts of arms, ammunition, explosive substances or materials wherefrom any explosive substance may be made; or

(b) direct that any person owning or having in his possession or under his control any arms, parts of arms, ammunition, explosive substances or materials wherefrom any explosive substance may be made shall keep the same in a secure

place approved by the competent authority or remove them to any place specified in the order.

(2) A competent authority may take possession of:—

(a) any arms, parts of arms, ammunition, explosive substances or materials wherefrom any explosive substance may be made; or

(b) any tools, machinery, implements or other material of any kind, likely, in his opinion, to be utilised, whether by the owner or by any other person, for the purpose of causing unlawful hurt or damage to any person or to any property.

10. (1) A competent authority may, by order in writing, require any person to make, in such form and within such time and to such authority as may be specified in the order, a return of any vehicles, vessels or other means of transport owned by him or in his possession or under his control.

(2) A competent authority, if in his opinion, it is necessary for the public advantage, may, by order in writing require any person owning or having in his possession or under his control, any vehicle, vessel or other means of transport to take such order therewith for such period as may be specified.

11. Where, in the opinion of a competent authority, such action is expedient for carrying out the purposes of this notification, such competent authority may close or divert any road, pathway or waterway, or may regulate traffic over any road, pathway or waterway:

Provided that the competent authority shall:—

(a) give notice in writing of such action to the local authority (if any) in whose charge such road, pathway or waterway is; and

(b) restore any such road, pathway or waterway to its original use and condition as soon as the necessities of the case permit this to be done.

12. A competent authority may control the operation of any State telegraph, or telephone office or station in any part of the area for which he is appointed, and, in particular, may intercept any telegraphic, or telephonic message in the course of transmission, may ascertain its contents and may prohibit its further transmission.

13. The powers conferred by section 12 shall be exercised in consultation with the authority in charge of the office or station concerned, or with any superior authority.

14. The power to issue search-warrants conferred by section 98 of the Code shall be deemed to include a power to issue warrants authorising:—

(a) the search of any place in which any Magistrate

mentioned in that section has reason to believe that any offence under this notification or any act prejudicial to the restoration or maintenance of law and order has been, is being or about to be committed, or that preparation for the commission of any such offence or act is being made ;

(b) the seizure in or on any place searched under clause (a) on anything which the officer executing the warrant has reason to believe is being used or is intended to be used, for any purpose mentioned in that clause ; and the provision of the Code shall, so far as may be, apply to such searches made under the authority of any warrant issued and to the disposal of any property seized under this section.

15. Any authority on which a power is conferred by or under this chapter may, by general or special order, authorise any person to enter and search any place, the search of which such authority has reason to believe to be necessary for the purpose of:—

(a) ascertaining whether it is necessary or expedient to exercise such power ; or

(b) ascertaining whether any order given, direction made, or condition prescribed in the exercise of such power has been duly complied with ; or

(c) generally giving effect to such power or securing compliance with or giving effect to, any order given, direction made or condition prescribed in the exercise of such power.

16. If any person disobeys or neglects to comply with an order made, direction given, or condition prescribed in accordance with the provisions of this notification or of the rules made thereunder, the authority which made the order, gave the direction or prescribed the condition may take or cause to be taken such action as it thinks necessary to give effect thereto.

CHAPTER III.

17. Whoever disobeys or neglects to comply with any order made or direction given in accordance with the provisions of section 4 or section 9 shall be punishable with imprisonment which may extend to three years, or with flogging not exceeding thirty stripes or ¹[fine extending to Rs. 1,000.]

¹Penalty for disobeying order under section 4 or section 9.

¹See footnote under section 18 on next page.

18. Subject to the provision of section 17 whoever disobeys or neglects to comply with any order made, direction given or condition prescribed in accordance with the provisions of chapter II, or impedes the lawful exercise of any power referred to in that chapter, such as throwing stones or using seditious language, shall be punishable with imprisonment which may extend to six months or with flogging not exceeding thirty stripes or ¹[fine extending to Rs. 1,000].

19. Whoever induces or attempts to induce any public servant or any servant of a local authority or any railway servant to disregard or fail in his duty as such servant, shall be punishable with imprisonment which may extend to one year or flogging or ¹[fine extending to Rs. 1,000.]

20. Whoever dissuades or attempts to dissuade any person from entering the Military or Police service shall be punishable with imprisonment which may extend to one year or with flogging or with ¹[fine extending to Rs. 1,000.]

21. Whoever by words whether spoken or written or by signs or by visible or audible representation or otherwise publishes any statement, rumour or report, which is false and which he has no reasonable ground to believe to be true, with intent to cause or which is likely to cause fear or alarm to the public or to any section of the public or hatred or contempt towards any public servant or any class of my subjects shall be punishable with imprisonment which may extend to one year or with flogging or ¹[fine extending to Rs. 1,000].

22. (1) Where it appears to me that the inhabitants of any area have assisted or harboured distressed persons, or have attacked the persons or property of members of any community of my subjects, I may, by notification impose a collective fine on the inhabitants of that area.

(2) I may exempt any person or class or section of such inhabitants from liability to pay any portion of such fine.

(3) The District Magistrate, after such enquiry as he may deem necessary, shall apportion such fine among the inhabitants who are liable collectively to pay it and such apportion-

¹ At the end of sections 17, 18, 19, 20, 21 and 25 (2) for the word 'both' words in brackets substituted by Notification 14-L/1990 as amended by 17-L/1991 published in the Government Gazette dated 4th Phagan 1990 and Government Gazette dated 20th Phagan 1991 respectively.

ment shall be made according to the District Magistrate's judgment of the respective means of such inhabitants.

(4) The portion of such fine payable by any person may be recovered from him as a fine or as arrears of land revenue.

EXPLANATION.—For the purposes of this section, the "inhabitants" of an area includes persons who themselves or by their agents or servants occupy or hold land or other immovable property within such area, and landlords who themselves or by their agents or servants collect rents from holders or occupiers of land in such area, notwithstanding that they do not actually reside therein.

¹[**22-A.** Whenever a fine is imposed under sections 17, 18, 19, 20, 21, or 25(2) on any person under the age of 21, the fine may be recovered from his father or guardian as if the fine had been imposed on such father or guardian.]

23. All trials under this chapter shall be summary.

CHAPTER IV.

SUPPLEMENTAL.

24. ²[The Government] may, by general or special order, appoint persons to be competent authorities to exercise any of the powers conferred upon a competent authority by chapter II within such area as may be specified in the order.

Appointment of Competent Authority.

25. The competent authority may make rules:—

Power to make rules.

(a) to prevent communication with disaffected persons and to secure information of the movements of disaffected persons;

(b) to prevent attacks on the persons or property of members of a community of my subjects, or to secure information of such attacks and of designs to make such attacks;

(c) to secure the safety of my Military forces and Police;

(d) to regulate the exercise of powers by competent authorities;

(e) to provide for the custody pending production before a Court of prisoners taken in circumstances in which the provisions of the Code cannot be followed without undue inconvenience; and

¹Section 22-A added by Notification 14-1/1990 as amended by 17-L/1990 published in Government Gazette dated 4th Phagan 1990 and Government Gazette dated 20th Phagan 1990 respectively.

²In section 24 "the Government" substituted for "I" vide Act X of 1996 published in Government Gazette dated 15th Phadon 1996.

(f) generally to carry out the purposes of this Notification.

(2) Any contravention of a rule shall be punishable with imprisonment which may extend to six months, or with flogging or ¹[fine extending to Rs. 1,000.]

Offences under this Notification and certain other offences to be cognizable and non-bailable.

26. (1) Notwithstanding anything contained in the Code, any offence punishable under this Notification shall be cognizable and non-bailable.

(2) Notwithstanding any thing contained in the Code, an offence punishable under sections 121, 121-A, 122, 123, 153-A, 160, 186, 187, 188, 189, 227, 505, 506, 507, or 508 Ranbir Penal Code or under section 17 of the Criminal Law Amendment Act, 1971, shall be cognizable and non-bailable.

27. No proceeding, rule or order purporting to be taken or made under this notification shall be called in question by any Court, and no civil or criminal proceeding shall be instituted against any person for anything done, or in good faith intended to be done, under this Notification or any rule made thereunder.

Bar of Jurisdiction

28. Nothing contained in this Notification shall be deemed to prevent any person from being prosecuted under any other law for any act or omission, which constitutes an offence punishable under this Notification.

Operation of other penal laws not barred.

(Sd.) HARISINGH,

MAHARAJA,

G. C. I. E., K. C. V. O., A. D. C.

¹See footnote under section 18.

NOTIFICATION NO. L-24 1988.**To provide against instigation to the refusal of the payment of certain liabilities.****CONTENTS.****Preamble.****SECTION.****SECTION.**

1. Penalty for instigation to the refusal of payment of certain liabilities.

report by a Police officer not below the rank of Sub-Inspector.

2. Offences under the Notification to be cognizable and non-bailable.

4. Objectionable publication to be forfeited.

3. Cognizance of offence upon a

5. Extent and commencement of Notification.

—————

Notification No. L-24 of 1988 to provide against instigation to the refusal of the payment of certain liabilities.

WHEREAS it has come to notice that a movement is on foot to instigate my subjects not to pay or to defer payment of certain liabilities and

Whereas it is necessary to provide against any such instigation to the illegal refusal of the payment of these liabilities; I hereby command as under:—

(1) Whoever by words spoken or written or by signs or by visible representations or otherwise, instigates expressly or by implication any person or class of persons not to pay or defer payment of land revenue or any sum recoverable as arrears of land revenue or any tax, rate, cess or other due or amount payable to Government or to any local authority or rent of agricultural land or anything recoverable as arrears or along with such rent; And whoever does any act with intent or knowing it to be likely that any words, signs, or visible representations containing such instigation shall thereby be communicated directly or indirectly to any person or class of persons in any manner whatsoever, shall be punishable with imprisonment which may extend to six months or with fine or with both.

(2) Notwithstanding anything contained in the State Code of Criminal Procedure an offence punishable under this Notification shall be cognizable and non-bailable.

(3) No Magistrate shall take cognizance of any offence punishable under this Notification except upon a report in writing of facts which constitute such offence made by a Police officer not below the rank of Sub-Inspector.

(4) Where—

(a) any newspaper or book as defined in the 'Press and Publication Regulation of 1971 or

(b) any document, wherever made, appears to contain any matter the publication of which is punishable under section 1, every copy of the issue of the newspaper containing such matter or every copy of such book or other document may be declared, by Notification in the Government Gazette to be forfeited, and thereupon any Police officer may seize the same wherever found in the Jammu and Kashmir State and any Magistrate may by warrant authorise any Police officer not below the rank of Sub-Inspector to enter upon and search for the same in any premises where any copy of such issue or any such book or other document may be or may be reasonably suspected to be.

(2) In sub-section (1) "document" includes also any painting, drawing or photograph or other visible representation.

(5) This Notification shall extend to the whole of Jammu and Kashmir State and shall come into operation immediately.

(Sd.) HARISINGH,

MAHARAJA

G. C. I. E., K. C. V. O., A. D. C.

THE LEGAL PRACTITIONERS (FEES) ACT, 1988.**Act No. VII of 1988.****CONTENTS.****Preamble.****SECTION.**

1. Short title, extent and commencement.

2. Interpretation.

3. Agreement for engagement of legal practitioners

SECTION.

4. Right of legal practitioner to sue for fees.

5. Liability of legal practitioner to be sued.

6. Repeal.

THE LEGAL PRACTITIONERS (FEES) ACT, 1988.**Act No. VII of 1988.**

[Sanctioned by His Highness the Maharaja Bahadur vide Notification No. 8-L/88, dated 15th June, 1931/1st Har 1988.]

An Act to define in certain cases the right of legal practitioners to sue for their fees and their liabilities to be sued in respect of negligence in the discharge of their professional duties.

WHEREAS it is expedient to define in certain cases the rights of legal practitioners to sue for their fees and their liabilities to be sued in respect of negligence in the discharge of their professional duties; It is hereby enacted as follows:—

Short title extent and commencement.

1. (1) This Act may be called the Legal Practitioners (Fees) Act, 1988.

(2) It extends to the whole of Jammu and Kashmir State.

(3) It shall come into force on such date as ¹[the Government] may, by notification in the Jammu and Kashmir Government Gazette, appoint.

2. For the purpose of this Act unless there is anything repugnant in the subject or context:—

Interpretation.

(a) "legal practitioner" means a legal practitioner as defined in section 3 of the Legal Practitioners Act, 1977; and

¹Substituted for "His Highness the Maharaja Bahadur" vide Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

(b) a legal practitioner shall not be deemed to "act" if he only pleads, or to agree to "act" if he agrees only to plead.

3. Any Legal Practitioner, who acts or agrees to act for any person, may by private agreement settle with such person the terms of his engagement and the fee to be paid for his professional service.

Agreement for engagement of legal practitioner.

4. Any such legal practitioner shall be entitled to institute and maintain legal proceedings for the recovery of any fee due to him under the agreement, or, if no such fee has been settled, a fee computed in accordance with the law for the time being in force in regard to the computation of the costs to be awarded to a party in respect of the fee of his legal practitioner.

Right of legal practitioner to sue for fee.

5. No legal practitioner, who has acted or agreed to act shall by reason only of being a legal practitioner, be exempt from liability to be sued in respect of any loss or injury due to any negligence in the conduct of his professional duties.

Liability of legal practitioner to be sued.

6. Sections 28 to 31 of the Legal Practitioners Act, 1977, are hereby repealed.

Repeal.

THE SMALL CAUSES COURTS (ATTACHMENT OF IMMOVABLE PROPERTY) ACT, 1988.

Act No. IX of 1988.

An Act to resolve certain doubts as to the powers, in regard to the attachment of immovable property, of the Small Causes Courts.

WHEREAS it is expedient further to amend the Small Causes Courts Act, 1968, and the Code of Civil Procedure, 1977, for the purposes of resolving certain doubts which have arisen as to the powers, in regard to the attachment of immovable property, of Courts constituted under the Small Causes Courts Act, 1968 and of Courts exercising the jurisdiction of a Court of Small Causes under that Act; It is hereby enacted as follows:—

Preamble.

1. This Act may be called the Small Causes Courts (attachment of immovable property) Act, 1988.

Short title.

2. (1) In sub-section (1) of section 16 of the Small Causes Courts Act, 1968, for the words beginning with the words "The Procedure" and ending with the words "are applicable" the following shall be substituted, namely:—

"The procedure prescribed in the Code of Civil Procedure, 1977, shall, save in so far as is otherwise provided by that Code or by this Act".

(2) In sub-section (2) of the same section, for the figures "253" the figures "145" shall be substituted and after the words "Code of Civil Procedure" the figure "1977" shall be added.

3. In clause (b) of Section 7 of the Civil Procedure Code, 1977, (hereinafter referred to as the said Code) for the words "so far as they relate to injunctions and interlocutory orders" the following shall be substituted namely:—

"So far as they authorise or relate to:—

- (i) orders for the attachment of immovable property;
- (ii) injunctions;
- (iii) the appointment of a receiver of immovable property; or
- (iv) the interlocutory orders referred to in clause (c) of section 94".

4. To order XXXVIII in the First Schedule to the said Code, after rule 12, the following rule shall be added, namely:—

"13. Nothing in this order shall be deemed to empower any Court of Small Causes to make an order for the attachment of immovable property".

Small Causes Court not to attach immovable property.

1 Extract from Orders on the recommendations contained in the Glancy Commission's Report.

PROHIBITION OF SLAUGHTER ON CERTAIN DAYS.

The recommendations of the Commission are approved and should be carried into effect. The Governors of Provinces should put up their proposals in regard to any places in

which the sale of meat etc. is repugnant to religious feelings, and orders respecting such places should be duly notified.

Butchers' shops will be closed entirely only on the following four days:—

- (a) Ram Navmi;
- (b) Janam Ashtmi;
- (c) His Highness the Maharaja Bahadur's Birthday;
- (d) Birthday of the Heir Apparent.

The existing exemptions in this respect in favour of certain classes will be cancelled.

No fees should be charged for the slaughter of goats etc. on the occasion of the Id-ul-Zuha or any other occasions on which such slaughter may be required for the purpose of religious observance.

THE PRESS AND PUBLICATIONS ACT, 1989.

Act No. I of 1989.

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UNAUTHORISED NEWS-SHEETS AND NEWSPAPERS.

38. Authorisation of persons to publish news-sheets.
39. Power to seize and destroy unauthorised news-sheets and newspapers.
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41. Penalty for disseminating unauthorised news-sheets and newspapers.
42. Operation of other laws not barred.
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THE PRESS AND PUBLICATIONS ACT, 1989.**Act No. I of 1989.**

[Sanctioned by His Highness the Maharaja Bahadur vide Notification No. 1-L/1989, dated 25th April 1982.]

WHEREAS it is expedient to amend the law relating to the Press and Publications; It is hereby commanded as follows:—

1. (1) This Act may be called the Jammu and Kashmir State Press and Publications Act of 1989.
Short title and extent.

(2) It extends to the whole of the Jammu and Kashmir State.

Definitions.

2. (1) In this Act unless there is any thing repugnant in the subject or context:—

(a) “book” includes every volume, part or division of a volume, pamphlet and leaflet, in any language, and every sheet of music, map, chart or plan separately printed or lithographed:

(b) “document” includes also any painting, drawing or photograph or other visible representation:

(c) “Magistrate” means unless otherwise provided in this Act, Governor of Jammu or Kashmir or Wazir of Leh or Gilgit within his respective jurisdiction:

(d) “newspaper” means any periodical work containing public news or comments on public news:

(e) “printing press” includes all engines, machinery, types, lithographic stones, implements, utensils and other plant or materials used for the purpose of printing:

(f) “Jammu and Kashmir State” means the territories vested in or which are under the rule of His Highness the Maharaja Bahadur:

(g) “editor” means the person who controls the selection of the matter that is published in a newspaper:

(h) “news-sheet” means any document other than a newspaper containing public news or comments on public news or any matter described in sub-section (1) of section 10:

(i) “press” includes a printing press and all machines, implements and plant and parts thereof and all materials used for multiplying documents:

(j) “unauthorised newspaper” means: (a) any newspaper in respect of which there are not for the time being valid declarations under section 5 of this Act; and (b) any newspaper in respect of which security has been required under this Act but has not been furnished:

(k) “unauthorised news-sheet” means any news-sheet other than a news-sheet published by a person authorised under section 38 of this Act to publish it:

(l) “undeclared press” means any press other than a press in respect of which there is for the time being a valid declaration under section 4 of this Act:

(m) “State-subject” means for the purposes of this Act every person who at the time being resides permanently within the State and has resided there for the previous twenty years:

¹(n) Repealed.

¹Definition of “Minister of State” deleted vide Act X of 1996 published in Government Gazette dated 18th Bhadon 1996.

(2) Save as herein otherwise provided all words and expressions in this Act shall have the same meaning as those respectively assigned to them in the Jammu and Kashmir State ¹Code of Criminal Procedure of Samvat 1969.

3. Every book or paper printed within the Jammu and Kashmir State shall have printed legibly on it the name of the printer and the place of printing, and (if the book or paper be published) the name of the publisher, and the place of publication.

Particulars to be printed on books and papers.

4. No person shall, within the Jammu and Kashmir State keep in his possession any press for the printing of books or papers, who is not a State subject as defined above, and who shall not have made and subscribed the following declaration before the Magistrate within whose local jurisdiction such press may be:—

Sanction for keeping Printing Press.

“I, A. B., declare that I have a press for printing at . . .

And this last blank shall be filled up with a true and precise description of the place where such press may be situate.

✓ **5.** No newspaper shall be printed or published in the Jammu and Kashmir State by any one who is not a State subject as defined above, and except in conformity with the provisions herein laid down.

Sanction for newspapers.

(1) Every copy of every such newspaper shall contain the name of the person who is the editor thereof printed clearly on such copy as the name of the editor of that newspaper.

(2) Every person who intends to print and publish such newspaper shall appear before the Magistrate within whose local jurisdiction such newspaper is intended to be printed and published and shall make and subscribe in duplicate the following declaration:—

“I, A. B., declare that I am the printer (or publisher or printer and publisher) of the newspaper entitled to be printed (or published, or printed and published as the case may be) at”.

(3) As often as the place of printing and publication is changed, a new declaration shall be necessary.

(4) As often as the publisher or the printer who shall have made such declaration as is aforesaid shall cease to reside in the Jammu and Kashmir State, a new declaration from a printer or publisher resident within the State territories and who satisfies the conditions given above shall be necessary, provided that no person who has not attained majority in accordance with the provisions of the Majority Act No. XXVI of 1977 shall be permitted to make the declaration prescribed

by this section, nor shall any such person edit a newspaper.

6. Each of the two originals of every declaration so made and subscribed as aforesaid shall be authenticated by the signature and official seal of the Magistrate before whom the said declaration shall have been made.

Authentication of declaration. One of the said originals shall be deposited among the office records of the Magistrate and the other shall be deposited among the records of the High Court of Judicature, Jammu and Kashmir State.

Deposit. The officer-in-charge of each original shall allow any person to inspect that original on payment of a fee of one rupee, and shall give to any person applying, a copy of the said declaration duly attested, on payment of a fee of two rupees.

Inspection and supply of copies. **7.** In any legal proceeding whatever, civil as well as criminal, the production of a duly attested copy of such declaration as is aforesaid shall be held (unless the contrary be proved) to be sufficient evidence as against the person whose name shall be subscribed to such declaration that the said person was printer or publisher or printer and publisher (according as the words of the said declaration may be) of every portion of every newspaper whereof the title shall correspond with the title of the newspaper mentioned in the declaration. In the case of the editor, a copy of the newspaper containing his name printed on it as that of the editor shall be sufficient evidence in similar circumstances.

Attested copy of declaration to be prima facie evidence. **8.** Provided always that any person who may have subscribed any such declaration as aforesaid and who may subsequently cease to be the printer or publisher of the newspaper mentioned in such declaration may appear before the Magistrate and make and subscribe in duplicate the following declaration:—

Declaration by persons who have ceased to be printers or publishers. “I, A. B., declare that I have ceased to be the printer (or publisher, or printer and publisher) of the newspaper entitled”

Authentication of filing. Each original of the latter declaration shall be authenticated by the signature and official seal of the Magistrate before whom the said latter declaration shall have been made and one original of the said latter declaration shall be filed along with each original of the former declaration.

The Officer-in-charge of each original of the latter declaration shall allow any person applying, to inspect that original on payment of a fee of one rupee and shall give to any person applying, a copy of the said latter declaration duly attested on payment of a fee of two rupees.

Inspection and supply of copies.

In all trials in which an attested copy of the former declaration shall have been put in evidence, it shall be lawful to put in evidence an attested copy of the latter declaration, and the former declaration shall not be taken to be evidence that the declarant was, at any period subsequent to the date of the latter declaration, printer or publisher of the newspapers mentioned therein.

Putting copies in evidence.

8-A. If any person, whose name has appeared as editor of a copy of a newspaper, claims that he was not the editor of the issue on which his name has so appeared, he may, within two weeks of his becoming aware that his name has been so published, appear before the Magistrate and make a declaration that his name was incorrectly published in that issue as that of the editor thereof, and if the Magistrate after making enquiry or causing such enquiry to be made as he may consider necessary is satisfied that such declaration is true, he shall certify accordingly, and on that certificate being given the provisions of section 7 shall not apply to that person in respect of that issue of the newspaper.

Person whose name has been incorrectly published as editor may make a declaration before a Magistrate.

The Magistrate may extend the period allowed by this section in any case where he is satisfied that such person was prevented by sufficient cause from appearing and making the declaration within that period.

9. (1) Any person keeping a printing press who is required to make a declaration under section 4 may be required by the Magistrate before whom the declaration is made, for reasons to be recorded in writing, to deposit with the Magistrate within ten days from the day on which the declaration is made, security to such an amount, not being more than one thousand rupees, as the Magistrate may in each case think fit to require, in money or the equivalent thereof in securities of the Government of India as the person making the deposit may choose:

Deposit of security by keepers of printing presses.

Provided that if a deposit has been required under subsection (3) from any previous keeper of the printing press, the security which may be required under this sub-section may amount to three thousand rupees.

(2) Where security required under sub-section (1) has been deposited in respect of any printing press, and for a period of three months from the date of the declaration mentioned in sub-section (1) no order is made by the ¹[Government] under section 10 in respect of such press, the security shall, on application by the keeper of the press, be refunded.

(3) Whenever it appears to the ²[Government] that any printing press kept in any place in the territories of the Jammu and Kashmir State in respect of which security under the provisions of this Act has not been required, or having been required has been refunded under sub-section (2), is used for the purpose of printing or publishing any newspaper, book or other document containing any words, signs or visible representations of the nature described in section 10 sub-section (1), the ³[Government] may, by notice in writing to the keeper of the press stating or describing such words, signs or visible representations, order the keeper to deposit with the Magistrate within whose jurisdiction the press is situated security to such an amount, not being less than five hundred or more than three thousand rupees as the ²[Government] may think fit to require, in money or the equivalent thereof in securities of the Government of India as the person making the deposit may choose.

(4) Such notice shall appoint a date, not being sooner than the tenth day after the date of the issue of the notice, on or before which the deposit shall be made.

10. (1) Whenever it appears to the ²[Government] that any printing press in respect of which any security has been ordered to be deposited under section 9 is used for the purpose of printing or publishing any newspaper, book or other document containing any words, signs or visible representations which:—

(a) incite to or encourage, or tend to incite to or to encourage, the commission of any offence of murder or any cognizable offence involving violence, or

(b) directly or indirectly express approval or admiration of any such offence, or of any person, real or fictitious, who has committed or is alleged or represented to have committed any such offence, or

³which tend directly or indirectly:—

(c) to seduce any officer or soldier in the Military forces of His Highness the Maharaja Bahadur or any Police officer

¹ In section 9 (2), word "Government" substituted for "Minister of State" vide Act II of 1996, published in the Government Gazette, dated 21st Baisakh, 1997.

² In sections 9 (3), 10, 12, 13, 14 (2) and (3), 15, 17, 18, 20, 26 and 33 the word "Government" substituted for "Minister of State" vide Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

³ In section 10 words within brackets substituted and explanations 2, 3 and 4 inserted by Act VIII of 1994 published in Government Gazette dated 25th Chet 1994. For correction see Government Gazette dated 18th Jeth, 1997.

from his allegiance or his duty, or

(d) to bring into hatred or contempt His Highness the Maharaja Bahadur or the Government established by law in this State or the Administration of Justice or any class or section of His Highness the Maharaja Bahadur's subjects, or to excite disaffection towards His Highness the Maharaja Bahadur or the said Government, or

(e) to encourage or incite any person to interfere with administration or the law or with the maintenance of law and order or to commit any offence, or

(f) to intimidate a public servant or a servant of a local authority to do any act or to forbear or delay to do any act connected with the exercise of his public functions, or

(g) to promote feelings of enmity or hatred between different classes of His Highness the Maharaja Bahadur's subjects, or

(h) to prejudice the recruiting of persons to serve in any of His Highness the Maharaja Bahadur's forces or in any Police force, or to prejudice the training, discipline or administration of any such force,

the Government may by notice in writing to the keeper of such printing press, stating or describing the words, signs or visible representations which in their opinion are of the nature described above,

(i) where security has been deposited, declare such security, or any portion thereof, to be forfeited to His Highness the Maharaja Bahadur; or

(ii) where security has not been deposited, declare the press to be forfeited to His Highness the Maharaja Bahadur; and may also declare all copies of such newspaper, book, or other document whenever found in the Jammu and Kashmir State to be forfeited to His Highness the Maharaja Bahadur]

EXPLANATION 1.—No expression of approval or admiration made in a historical or literary work shall be deemed to be of the nature presented on this sub-section unless it has the tendency described in clause (a).

¹**EXPLANATION 2.**—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means without exciting or attempting to excite hatred, contempt or disaffection shall not be deemed to be of the nature described in clause (d) of this sub-section.

¹**EXPLANATION 3.**—Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, shall not be deemed to be of the nature described in clause (d) of this sub-section.

¹See footnote under section 10. For correction see Government Gazette dated 18th Jeth, 1987.

¹EXPLANATION 4.—Words pointing cut, without malicious intention and with an honest view to their removal, matters which are producing or have a tendency to produce feelings of enmity or hatred between different classes of His Highness the Maharaja Bahadur's subjects shall not be deemed to be words of the nature described in clause (g) of this sub-section.

(2) After the expiry of ten days from the date of the issue of a notice under sub-section (1) declaring a security or any portion thereof to be forfeited the declaration made in respect of such press under section 4 shall be deemed to be annulled.

11. (1) Where the security given in respect of any press, or any portion thereof, has been declared forfeited under section 10 or section 12 every person making a fresh declaration in respect of such press under section 4 shall deposit with the Magistrate before whom such declaration is made security to such an amount, not being less than one thousand or more than ten thousand rupees, as the Magistrate may think fit to require, in money or the equivalent thereof in securities of the Government of India as the person making the deposit may choose.

(2) Where a portion only of the security given in respect of such paper has been declared forfeited under section 10 or section 12 any unforfeited balance still in deposit shall be taken as a part of the amount of security required under sub-section (1).

12. (1) If, after security has been deposited under section 11, the printing press is again used for the purpose of printing or publishing any newspaper, book or other document containing any words, signs or visible representation which in the opinion of the ²[Government], are of the nature described in section 10, sub-section (1), the ²[Government] may, by notice in writing to the keeper of such printing press, stating or describing such words, signs or visible representations declare:—

(a) the further security so deposited, or any portion thereof, and

(b) all copies of such newspaper, book or other document wherever found in the Jammu and Kashmir State to be forfeited to His Highness the Maharaja Bahadur.

(2) After the expiry of ten days from the date of issue of a notice under sub-section (1) the declaration made in respect of such press under section 4 shall be deemed to be annulled.

13. Where any printing press is, or any copies of any newspaper, book or other document are declared forfeited to His Highness the Maharaja Bahadur under this Act, the ²[Government] may direct the Magistrate to issue a warrant empowering any

¹See footnote under section 10.

²See footnote under section 9.

Police officer, not below the rank of a Sub Inspector to seize and detain any property ordered to be forfeited and to enter upon and search for such property in any premises:—

(a) where any such property may be or may be reasonably suspected to be, or

(b) where any copy of such newspaper, book or other document is kept for sale, distribution, publication or public exhibition or reasonably suspected to be so kept.

14. (1) Any publisher of a newspaper who is required to make a declaration under section 5, may be required by the Magistrate before whom the declaration is made, for reasons to be recorded in writing, to deposit with the Magistrate within ten days from the day on which the declaration is made, security to such an amount, not being more than one thousand rupees, as the Magistrate may in each case think fit to require, in money or the equivalent thereof in securities of the Government of India as the person making the deposit may choose:

Deposit of security by publisher of newspaper.

Provided that if a deposit has been required under sub-section (3) from any previous publisher of the newspaper the security which may be required under this sub-section may amount to three thousand rupees.

(2) Where security required under sub-section (1) has been deposited in respect of any newspaper, and for a period of three months from the date of declaration mentioned in sub-section (1) no order is made by the ¹[Government] under section 15 in respect of such newspaper, the security shall, on application by the publisher of the newspaper, be refunded.

(3) Whenever it appears to the ¹[Government] that a newspaper published within the territories of the Jammu and Kashmir State, in respect of which security under the provisions of this Act has not been required, or having been required has been refunded under sub-section (2), contains any words, signs or visible representations of the nature described in section 10 sub-section (1), the ¹[Government] may, by notice in writing to the publisher of such newspaper, stating or describing such words, signs or visible representations, require the publisher to deposit with the Magistrate within whose jurisdiction the newspaper is published, security to such an amount, not being less than five hundred or more than three thousand rupees, as the ¹[Government] may think fit to require, in money or the equivalent thereof in securities of the Government of India as the person making the deposit may choose.

(4) Such notice shall appoint a date, not being sooner than the tenth day after the date of the issue of the notice, on or before which the deposit shall be made.

¹ See footnote, under section 9.

15. (1) If any newspaper in respect of which any security ^{Power to declare security forfeited in certain cases} has been ordered to be deposited under section 14 contains any words, signs or visible representations which, in the opinion of the ¹[Government], are of the nature described in section 10 sub-section (1), the ¹[Government] may, by notice in writing to the publisher of such newspaper stating or describing such words, signs or visible representations:—

(a) where the security has been deposited, declare such security, or any portion thereof, to be forfeited to His Highness the Maharaja Bahadur; or

(b) where the security has not been deposited, annul the declaration made by the publisher of such newspaper under section 5;

and may also declare all copies of such newspaper, wherever found in the Jammu and Kashmir State, to be forfeited to His Highness the Maharaja Bahadur.

(2) After the expiry of ten days from the date of the issue of a notice under sub-section (1) declaring a security, or any portion thereof, to be forfeited, the declaration made by the publisher of such newspaper under section 5, shall be deemed to be annulled.

16. (1) Where the security given in respect of any newspaper, or any portion thereof, is declared ^{Deposit of further security} forfeited under section 15 or section 17, any person making a fresh declaration under section 5, as publisher of such newspaper, or any other newspaper which is the same in substance as the said newspaper, shall deposit with the Magistrate before whom the declaration is made security to such an amount, not being less than one thousand or more than ten thousand rupees, as the Magistrate may think fit to require in money or the equivalent thereof in securities of the Government of India as the person making the deposit may choose.

(2) Where a portion only of the security given in respect of newspaper has been declared forfeited under section such 15 or section 17, any forfeited balance still in deposit shall be taken as part of the amount of security required under subsection (1).

17. (1) If after security has been deposited under section 16 the newspaper again contains any words, signs or visible representations, which, in the ^{Power to declare further security and newspaper forfeited} opinion of the ¹[Government], are of the nature described in section 10 sub-section (1) he may, by notice in writing to the publisher of such newspaper, stating or describing such words, signs or visible representations, declare:—

(a) the further security so deposited or any portion thereof, and

¹See footnote under section 9.

(b) all copies of such newspaper, wherever found in the State territories, to be forfeited to His Highness the Maharaja Bahadur.

(2) After the expiry of ten days from the date of the issue of a notice under sub-section (1) the declaration made by the publisher of such newspaper under section 5 shall be deemed to be annulled and no further declaration in respect of such newspaper shall be made save with the permission of the ¹[Government].

18. Where any newspaper, book or other document wherever made appears to the ¹[Government] to contain any words, signs or visible representations of the nature described in section 10, sub-section (1), the ¹[Government] may, by notification in the Jammu and Kashmir Government Gazette, stating the grounds of its opinion, declare every copy of such book or other document to be forfeited to His Highness the Maharaja Bahadur, and thereupon any Police Officer may seize the same, wherever found in the Jammu and Kashmir State, and any Magistrate may by warrant authorise any Police officer not below the rank of Sub-Inspector to enter upon and search for the same in any premises where any copy of such issue or any book or other document may be or may be reasonably suspected to be.

Power to declare certain publications forfeited and to issue search warrants for same

19. Any officer of the State Customs and Excise Department not below the rank of Assistant Inspector may detain any package brought into the Jammu and Kashmir State which he suspects to contain any newspaper, book or other documents of the nature described in section 10 sub-section (1) and shall forthwith forward copies of the newspapers, books or other documents found therein to the Magistrate to be disposed of in such manner as he may direct.

Power to detain packages containing certain publications when imported into the State.

20. (1) Where a deposit is required from the keeper of a printing press under section 9, such press shall not be used for the printing or publishing of any newspaper, book or other document after the expiry of the time allowed to make the deposit until the deposit has been made, and where a deposit is required from the keeper of a printing press under section 11, such press shall not be so used until the deposit has been made.

Consequences of failure to deposit security required.

(2) Where any printing press is used in contravention of sub-section (1), the ¹[Government], may, by notice in writing

¹See footnote under section 9.

to the keeper thereof, declare the press to be forfeited to His Highness the Maharaja Badhadur.

(3) Where a deposit is required from the publisher of a newspaper under section 14 and the deposit is not made within the time allowed, the declaration made by the publisher under section 5, shall be deemed to be annulled.

Powers of High Court.

21. (1) The keeper of a printing press who has been ordered to deposit security under sub-section (3) of section 9, or the publisher of a newspaper who has been ordered to deposit security under sub-section (3) of section 14, or any person having an interest in any property in respect of which an order of forfeiture has been made under section 10, section 21, section 15, section 17 or section 18 may, within two months from the date of such order, apply to the High Court, to set aside such order, and the High Court shall decide if the newspaper, book or other document in respect of which the order was made did nor did not contain any words, signs or visible representations of the nature described in section 10 sub-section (1).

(2) The keeper of a printing press in respect of which an order of forfeiture has been made under sub-section (2) of section 20 on the ground that it has been used in contravention of sub-section (1) of that section may apply to the High Court to set aside the order on the ground that the press was not so used.

22. Every such application shall be heard and determined by a Special Bench of the High Court composed of three Judges.

23. (1) If it appears to the Special Bench on an application under sub-section (1) of section 21 that the words, signs or visible representations contained in the newspaper, book or other document in respect of which the order in question was made were not of the nature described in section 10, sub-section (1), the Special Bench shall set aside the order.

(2) If it appears to the Special Bench on an application under sub-section (2) of section 21 that the printing press was not used in contravention of sub-section (1) of section 20, it shall set aside the order of forfeiture.

(3) Where there is a difference of opinion among the Judges forming the Special Bench, the decision shall be in accordance with the opinion of the majority of those Judges.

24. On the hearing of an application under sub-section (1) of section 21 with reference to any newspaper, any copy of such newspaper published

Evidence to prove nature or tendency of newspapers.

lished after the commencement of this Act may be given in evidence, in aid of the proof of the nature or tendency of the words, signs or visible representations contained in such newspaper in respect of which the order was made.

25. The High Court shall, as soon as conveniently may be, frame rules to regulate the procedure in the case of such applications, the amount of the costs thereof and the execution of orders passed thereon and until such rules are framed the practice of the Court on proceedings other than suits and appeals shall apply, so far as may be practicable, to such applications.

26. Two printed or lithographed copies of the whole of every book and '[newspaper] which shall be printed or lithographed in the Jammu and Kashmir State together with all maps, prints and other engravings belonging thereto, finished and coloured in the same manner as the best copies of the same shall be delivered by the printer²[at such place and to such officer as the Government shall direct] free of expense to the Jammu and Kashmir State—

³[(a) in the case of a book within one calendar month after the day on which it shall first be delivered out of the press and

(b) in the case of a newspaper as soon as an issue is published,

the copies so delivered being bound, sewed or stitched together and upon the best paper on which any copies of the book or newspaper shall be printed or lithographed.

Nothing in this section shall apply to any second or subsequent edition of a book in which edition no additions or alterations either in the letter press or in the maps, book, prints or other engravings belonging to the book have been made, and a copy of the first or some preceding edition of which has been delivered under this Act.

Penalties.

27. Whoever shall print or publish any book or paper otherwise than in conformity with the rule contained in section 3 shall, on conviction before a Magistrate be punished by fine not

¹In section 26 "newspaper" substituted for "paper" by Act III of 1990 published in Government Gazette dated 30th Mar 1990

²In section 26, as amended by Act X of 1996, for the words 'at the office of the Government' the words "at such place and to such officer as the Government shall direct" substituted vide Act II of 1997, published in the Government Gazette dated 21st Baisakh, 1997.

³In section 26 as amended by Act III of 1990 words in brackets substituted, para 2 deleted and in para 3, the words "or newspaper" wherever found deleted by Act VIII of 1994 published in Government Gazette dated 25 Chet 1994. For correction see Government Gazette dated 18th Jeth, 1997.

exceeding two thousand rupees or by simple imprisonment for a term not exceeding six months or by both.

28. Whoever shall keep in his possession any such press as aforesaid without making such a declaration as is required by section 4 shall, on conviction before a Magistrate, be punished by fine not exceeding two hundred rupees, or by simple imprisonment for a term not exceeding six months or by both.

29. Any person who shall in making any declaration under the authority of this Act, make a statement which is false, and which he either knows or believes to be false, or does not believe to be true, shall, on conviction before a Magistrate be punished by fine not exceeding two thousand rupees, and imprisonment for a term not exceeding six months.

30. Whoever shall edit, print or publish any newspaper without conforming to the rules hereinbefore laid down, or whoever shall edit, print or publish or shall cause to be edited, printed or published, any newspaper, knowing that the said rules have not been observed with respect to the newspaper, shall on conviction before a Magistrate, be punished with fine not exceeding two thousand rupees, or imprisonment for a term not exceeding six months or both.

31. If any printer of any such book as is referred to in section 26, shall fail to deliver the copies of the same pursuant to that section, or if any publisher or other person employing any such printer shall fail to supply him pursuant to that section with the maps, prints and other engravings, such printer publisher or other person shall, on conviction, be punished with fine which extend to fifty rupees for every default.

32. If any printer of any newspaper published in the State neglects to deliver copies of the same in compliance with section 26, he shall, on the complaint of the officer to whom copies should have been delivered or of any person authorised by that officer in this behalf, be punishable on conviction by a Magistrate having jurisdiction in the place where the newspaper was printed, with fine which may extend to fifty rupees for every default.

33. (1) Whoever keeps in his possession a press which is used for the printing of books or papers without making a deposit under section 9 or section 11, as required by the

¹[Government] or the Magistrate as the case may be, shall on conviction by a Magistrate be liable to the penalty to which he would be liable if he had failed to make the declaration prescribed by section 4.

(2) Whoever publishes any newspaper without making a deposit under section 14 or section 16, as required by the ¹[Government] or the Magistrate as the case may be, or publishes such newspaper knowing that such security has not been deposited, shall, on conviction by a Magistrate be liable to the penalty to which he would be liable if he had failed to make the declaration prescribed by section 5.

34. Every declaration of forfeiture purporting to be made under this Act, shall as against all persons be conclusive evidence that the forfeiture therein referred to has taken place, and no proceeding purporting to be taken under this Act shall be called in question by any Court except the High Court on such application as is aforesaid and no civil or criminal proceeding, except as provided by this Act, shall be instituted against any person for any thing done or in good faith intended to be done under this Act.

35. Where any person has deposited any security under this Act and ceases to be a keeper of the printing press or publisher, he may apply to the Magistrate for the return of the said security, and thereupon such security shall, upon proof to the satisfaction of the Magistrate and subject to the provisions hereinbefore contained, be returned to such person.

36. Every notice under this Act shall be sent to a Magistrate who shall cause it to be served in the manner provided for the services of summonses under the ²Code of Criminal Procedure Samvat 1969.

37. Every warrant issued under this Act shall, so far as it relates to a search, be executed in the manner provided for the execution of search warrants under the ²Code of Criminal Procedure Samvat 1969.

Unauthorised News-Sheets and Newspapers.

38. (1) The Magistrate may, by order in writing and subject to such conditions as he may think fit to impose, authorise any person by name to publish a news-sheet from time to time.

(2) A copy of an order under sub-section (1) shall be fur-

¹See footnote under section 9.

²Act XIII of 1989.

nished to the person thereby authorised.

(3) The Magistrate may at any time revoke an order made by him under sub-section (1).

39. (1) Any Police officer, or any other person empowered in this behalf by the '[Government], may seize any unauthorised news-sheet or unauthorised newspaper, wherever found.

Power to seize and destroy unauthorised news-sheets and newspapers.

(2) Any Magistrate of the first class may by warrant authorise any Police officer not below the rank of Sub-Inspector to enter upon and search any place where any stock of unauthorised news-sheets or unauthorised newspapers may be or may be reasonably suspected to be, and such Police officer may seize any documents found in such place which, in his opinion, are unauthorised news-sheets or unauthorised newspapers.

(3) All documents seized under sub-section (1) shall be produced as soon as may be before any Magistrate of the first class, and all documents seized under sub-section (2) shall be produced as soon as may be before the Court of the Magistrate who issued the warrant.

(4) If in the opinion of such Magistrate or Court, any of such documents are unauthorised news-sheets or unauthorised newspapers, the Magistrate or Court may cause them to be destroyed. If, in the opinion of such Magistrate or Court, any of such documents are not unauthorised news-sheets or unauthorised newspapers such Magistrate or Court shall dispose of them in the manner provided in section 523, 524 and 525 of the ²Code of Criminal Procedure 1969.

40. (1) Where a District Magistrate or a Sub-Divisional Magistrate has reasons to believe that an unauthorised news-sheet or unauthorised newspaper is being produced from an undeclared press within the limits of his jurisdiction, he may by warrant authorise any Police officer not below the rank of Sub-Inspector to enter upon and search any place wherein such undeclared press may be or may be reasonably suspected to be, and if, in the opinion of such Police officer any press found in such place is an undeclared press and is used to produce an unauthorised news-sheet or unauthorised newspaper, he may seize such press and any documents found in the place which in his opinion are unauthorised news-sheets or unauthorised newspapers.

Power to seize and forfeit undeclared presses producing unauthorised news-sheets and newspapers.

(2) The Police officer shall make a report of the search to the Court which issued the warrant and shall produce before

¹In section 39 "Government" substituted for the words "Minister of State" vide Act II of 1997, published in Government Gazette dated 21st Baisakh, 1997.

²Act XXII of 1969.

such Court all property seized or such part thereof as may be readily removed.

(3) If such Court, after such enquiry as it may deem requisite, is of opinion that the press seized under this section is an undeclared press which is used to produce an unauthorised news-sheet or unauthorised newspaper, it may, by order in writing, declare the press to be forfeited to His Highness the Maharaja Bahadur. If after such enquiry, the Court is not of such opinion, it shall dispose of the press in the manner provided in sections 523, 524, and 525 of the 'Code of Criminal Procedure 1969.

(4) The Court shall deal with documents produced before it under this section in the manner provided in sub-section (4) of section 39.

41. (1) Whoever makes, sells, distributes, publishes or publicly exhibits or keeps for sale, distribution or publication, any unauthorised news-sheet or newspaper, shall be punishable with imprisonment of either description which may extend to six months, or with fine or both.

(2) Any offence punishable under sub-section (1) and any abetment of any such offence shall be cognizable.

42. Nothing herein contained shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence under this Act.

43. The ²[Government] may by notification published in the Jammu and Kashmir Government Gazette make such rules as may be necessary or desirable for carrying out the object of this Act and may similarly from time to time repeal, alter and add to such rules.

44. The Jammu and Kashmir State Press and Publications Regulation 1971 is hereby repealed.

¹ Act XXIII of 1989.

² In sections 43 "Government" substituted for the words "Minister of State" vide Act II of 1997, published in the Government Gazette dated 21st Baisakh, 1997.

THE STATE SOLDIERS' LITIGATION ACT, 1989.**Act No. V of 1989.****CONTENTS.***Preamble.***SECTION.****SECTION.**

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THE STATE SOLDIERS' LITIGATION ACT, 1989.**Act No. V of 1989.**

[Sanctioned by His Highness the Maharaja Bahadur vide Notification No. 9-L/1989, dated 1st June 1932/20th Jeth, 1989.]

An Act to consolidate and amend the law to provide for the special protection in respect of Civil and Revenue litigation of the State soldiers serving under special conditions.

WHEREAS it is expedient to consolidate and amend the law

to provide for the special protection in respect of Civil and Revenue litigation of the State soldiers serving under special conditions; It is hereby enacted as follows:—

Short title, extent and commencement.

1. (1) This Act may be called the State Soldiers (Litigation) Act, 1989.

(2) It extends to the whole of Jammu and Kashmir State.

(3) It shall come into force at once.

Definition.

2. In this Act, unless there is anything repugnant in the subject or context:—

(a) "Court" means a Civil or Revenue Court;

(b) "State soldier" means any person subject to the Kashmir Service Regulation and enlisted in and borne on the strength of any corps, unit or department administered by the Army Department of Jammu and Kashmir Government;

(c) "prescribed" means prescribed by rules made under this Act; and

(d) "proceeding" includes any suit, appeal or application.

3. For the purpose of this Act, a State soldier shall be deemed to be, or as the case may be, to have been serving—

Circumstances in which a State soldier shall be deemed to be serving under special conditions

(a) under special conditions—

(i) when he is or has been serving under peace conditions in any province of the Jammu and Kashmir State other than the province where the Court before which the proceedings are to be taken is situated; provided that the Commanding Officer of the individual shall certify in writing that the individual cannot attend the Court for reasons of State duty.

(ii) when he is or has been serving under war conditions or overseas, or at any place outside the territories of the Jammu and Kashmir State.

(b) under war conditions—

when he is or has been, at any time during the continuance of any hostilities declared by His Highness the Maharaja Bahadur by Notification in the Jammu and Kashmir Government Gazette to constitute a State of War for the purpose of the Act or at any time during a period of six months thereafter;—

(i) under orders to proceed on field service, or for Frontier duty at any place within the territorial limit of Gilgit and Ladakh or

(ii) serving with any unit which is for the time being mobilized for service in Gilgit or Ladakh or mobilized for any purpose whatsoever,

4. If any person presenting any plaint, application or appeal to any Court has reason to believe that any adverse party is a State soldier who is serving under special conditions, he shall state the fact in his plaint, application or appeal.

Particulars to be furnished in plaints applications or appeals to Court.

5. If any Wazir-i-Wazarat has reason to believe that a State soldier who ordinarily resides or has property in his district and who is a party to any proceeding pending before any Court, is unable to appear therein, the Wazir-i-Wazarat may certify the fact in the prescribed manner to the Court.

Power of Wazir-i-Wazarat to intervene in case of unrepresented State soldier.

6. If a Wazir-i-Wazarat has certified under section 5, or if the Court has reason to believe that a State soldier, who is a party to any proceeding pending before it, is unable to appear therein, and if the soldier is not represented by any person duly authorised to appear, plead or act on his behalf, the Court shall suspend the proceeding, and shall give notice thereof in the prescribed manner to the prescribed authority:

Notice to be given in case of unrepresented State soldier.

Provided that the Court may refrain from suspending the proceeding and issuing the notice if—

(a) the proceeding is a suit, appeal or application instituted or made by the soldier, alone or conjointly with others with the object of enforcing a right of pre-emption, or

(b) the interests of the soldier in the proceeding are, in the opinion of the Court, either identical with those of any other party to the proceeding and adequately represented by such other party or merely of a formal nature.

7. If, on receipt of a notice under section 6 of the prescribed authority certifies in the prescribed manner to the Court in which the proceeding is pending that the soldier in respect of whom the notice was given is serving under special conditions and that a postponement of the proceeding in respect of the soldier is necessary in the interests of justice, the Court shall thereupon postpone the proceeding in respect of the soldier for the prescribed period, or if no period has been prescribed, for such period as it thinks fit.

Postponement of proceedings.

8. If, after issue of a notice under section 6, the prescribed authority either certifies that the soldier is not serving under special conditions or that such postponement is not necessary, or fails to certify, in the case of a sol-

Court may proceed when no certificate received.

dier resident in the district in which the Court is situate, within two months or, in any other case, within three months from the date of the issue of the notice, that such postponement is necessary, the Court may, if it thinks fit, continue the proceeding.

9. When any document purporting to be signed by the Commanding Officer of a State soldier who is a party to any proceeding is produced by or on behalf of the soldier before the Court in which the proceeding is pending and is to the effect that the soldier—

(a) is on leave of absence for a period not exceeding two months, and is on the expiration of his leave to proceed on service under special conditions, or

(b) is on sick leave for a period not exceeding three months and is on the expiration of his leave to rejoin his unit with a view to proceeding on service under special conditions, the proceeding in respect of such soldier may, in any case such as is referred to in the proviso to section 6 and shall, in any other case be postponed in the manner provided in section 7.

10. (1) In any proceeding before a Court in which a decree or order has been passed against a State soldier whilst he was serving under war conditions or at any time after its enforcement, whilst he was serving under any special conditions, the soldier may apply to the Court which passed the decree or order for an order to set aside the same, and, if the Court, after giving an opportunity to the opposite party of being heard, is satisfied that the interests of justice require that the decree or order should be set aside as against the soldier, the Court shall subject to such conditions, if any, as it thinks fit to impose, make an order accordingly.

(2) No such application shall be entertained unless it is made within two months from the expiry of the first period of thirty days, after the date of the decree or order, or where the summons or notice was not duly served on the applicant, after the date on which the applicant had knowledge of the decree or order, during no part of which the soldier was serving under special conditions:

Provided that the provisions of section 5 of the Limitation Act, shall apply to such applications.

(3) When the decree or order in respect of which an application under sub-section (1) is made is of such a nature that it cannot be set aside as against the soldier only, it may be set aside as against all or any of the parties against whom it has been made.

(4) Where a Court sets aside a decree or order under this section, it shall appoint a day for proceeding with the suit, appeal or application, as the case may be.

11. In computing the period of limitation prescribed by the Limitation Act or any other law for the time being in force for any suit, appeal or application to any Court by any party which is or has been a State soldier the time during which the soldier has been serving under war conditions since 1972, shall be excluded :

Modification of law of limitation where State soldier serving under war or special conditions is a party.

Provided that this section shall not apply in the case of any suit, appeal or application instituted or made with the object of enforcing a right of pre-emption.

12. If any Court is in doubt whether, for the purpose of section 10 or section 11, a State soldier is or was at any particular time serving under war or other special conditions, it may refer the point for the decision of the prescribed authority, and the certificate of that authority shall be conclusive evidence on the point.

Power of Court to refer question as to whether service was under war or other special conditions.

13. His Highness the Maharaja Bahadur, after consulting the High Court, may, by notification in the Jammu and Kashmir Government Gazette, make rules to provide for all or any of the following matters, namely:—

Rule making power.

(a) the manner and form in which any notice or certificate under this Act shall be given ;

(b) the period for which proceedings or any class of proceedings shall be postponed under section 7;

(c) the persons who shall be the prescribed authorities for the purposes of this Act;

(d) any other matter which is to be or may be prescribed; and

(e) generally, any matters incidental to the purposes of this Act.

14. His Highness the Maharaja Bahadur, may, by Notification in the Jammu and Kashmir Government Gazette, direct that all or any of the provisions of this Act shall apply to any other class of persons in the service of His Highness the Maharaja Bahadur specified in such Notification in the same manner as they apply to State soldiers.

Power to apply the provisions of the Act to other persons in the service of His Highness.

15. The Indian Soldiers Litigation Regulation 1972 and State Council Resolution No. 6 of 28th July 1984 are hereby repealed.

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447. Punishment for criminal trespass.

448. Punishment for house-trespass.

449. House-trespass in order to commit offence punishable with death.

450. House-trespass in order to commit offence punishable with imprisonment for life.

451. House-trespass in order to commit offence punishable with imprisonment.

452. House-trespass after preparation for hurt, assault or wrongful restraint.

453. Punishment for lurking house-trespass or house-breaking.

454. Lurking house-trespass or house-breaking in order to commit offence punishable with imprisonment.

455. Lurking house-trespass or house-breaking after preparation for hurt, assault or wrongful restraint.

456. Punishment for lurking house-

SECTION.

trespass or house-breaking by night.

457. Lurking house-trespass or house-breaking by night in order to commit offence punishable with imprisonment.

458. Lurking house-trespass or house-breaking by night after preparation for hurt, assault or wrongful restraint.

459. Grievous hurt, caused whilst committing lurking house-trespass or house-breaking.

460. All persons jointly concerned in lurking house-trespass or house-breaking by night punishable where death or grievous hurt caused by one of them.

461. Dishonestly breaking open receptacle containing property.

462. Punishment for same offence when committed by person entrusted with custody.

CHAPTER XVIII.

OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY MARKS.

463. Forgery.

464. Making a false document

465. Punishment for forgery.

466. Forgery of record of Court or of public register, etc.

467. Forgery of valuable security, will, etc.

468. Forgery for purpose of cheating.

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469. Forgery for purpose of harming reputation.
470. Forged document.
471. Using as genuine a forged document.
472. Making or possessing counterfeit seal, etc., with intent to commit forgery punishable under section 467.
473. Making or possessing counterfeit seal, etc., with intent to commit forgery punishable otherwise.
474. Having possession of document described in section 466 or 467, knowing it to be forged and intending to use it as genuine.
475. Counterfeiting device or mark used for authenticating documents described in section 467, or possessing counterfeit marked material.
476. Counterfeiting device or mark used or authenticating documents other than those described in section 467 or possessing counterfeit marked material.
477. Fraudulent cancellation, destruction, etc., of will, authority to adopt, or valuable security.
- 477-A. Falsification of accounts.

Of Trade, Property and Other Marks.

478. Trade mark.
479. Property mark.
480. Using a false trade mark.
481. Using a false property mark.

SECTION.

482. Punishment for using a false trade mark or property mark.
483. Counterfeiting a trade mark or property mark used by another.
484. Counterfeiting a mark used by a public servant.
485. Making or possession of any instrument for counterfeiting a trade mark or property mark.
486. Selling goods marked with a counterfeit trade mark or property mark.
487. Making a false mark upon any receptacle containing goods.
488. Punishment for making use of any such false mark.
489. Tampering with property mark with intent to cause injury.

Of Currency-Notes and Bank-Notes.

- 489-A. Counterfeiting currency-notes or bank-notes.
- 489-B. Using as genuine forged or counterfeit currency-notes or bank-notes.
- 489-C. Possession of forged or counterfeit currency-notes or bank-notes.
- 489-D. Making or possessing instruments or materials for forging or counterfeiting currency-notes or bank-notes.

CHAPTER XIX.

OF THE CRIMINAL BREACH
OF CONTRACTS OF SERVICE.

490. Breach of contract of service during voyage or journey.

SECTION.

- 491 Breach of contract to attend on and supply wants of helpless person.
492. Breach of contract to serve at distant place to which servant is conveyed at master's expense.

CHAPTER XX.

OF OFFENCES RELATING TO MARRIAGE.

493. Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.
494. Marrying again during lifetime of husband or wife.
495. Same offence with concealment of former marriage from person with whom subsequent marriage is contracted.
496. Marriage ceremony fraudulently gone through without lawful marriage.
497. Adultery.
498. Enticing or taking away or detaining with criminal intent a married woman.

CHAPTER XXI.

OF DEFAMATION.

499. Defamation.
- Imputation of truth which public good requires to be made or published.
- Public conduct of public servants.

SECTION.

Conduct of any person touching any public question.

Publication of reports of proceedings of Courts.

Merits of case decided in Court, or conduct of witnesses and others concerned.

Merits of public performance.

Censure passed in good faith by person having lawful authority over another.

Accusation preferred in good faith to authorised person.

Imputation made in good faith by person for protection of his or other interests.

Caution intended for good of person to whom conveyed or for public good.

500. Punishment for defamation.

501. Printing or engraving matter known to be defamatory.

502. Sale of printed or engraved substance containing defamatory matter.

CHAPTER XXII.

OF CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE.

503. Criminal intimidation.

504. Intentional insult with intent to provoke breach of the peace.

505. Statements conducing to public mischief.

506. Punishment for criminal intimidation.

If threat be to cause death or grievous hurt, etc.

SECTION.

SECTION.

507. Criminal intimidation by an anonymous communication.

with imprisonment for life or imprisonment.

508. Act caused by inducing person to believe that he will be rendered an object of the Divine displeasure.

CHAPTER XXIV.

OF OFFENCES PUNISHABLE WITH WHIPPING.

509. Word, gesture or act intended to insult the modesty of a woman.

512. Whipping under section 53.

510. Misconduct in public by a drunken person.

513. Offences punishable with whipping in lieu of other punishment.

CHAPTER XXIII.

OF ATTEMPTS TO COMMIT OFFENCES.

514. Offences punishable with whipping in lieu of or in addition to other punishment.

511. Punishment for attempting to commit offences punishable

515. Juvenile offenders when punishable with whipping.

THE JAMMU AND KASHMIR STATE RANBIR PENAL CODE.

Act No. XII of 1989.

[Sanctioned by His Highness the Maharaja Bahadur vide Law Department Notification No. 23-L/1989, dated 6th August 1932/23rd Sawan 1989.]

CHAPTER I.

INTRODUCTION.

WHEREAS it is expedient to provide a general Penal Code for Jammu and Kashmir State; It is enacted as follows:—

Proable,

1. This Act shall be called the Jammu and Kashmir State Ranbir Penal Code, and shall take effect from 1st Har 1949 throughout the whole of the territories which are or may become vested in His Highness the Maharaja Bahadur.

Title and extent of operation of the Code.

2. Every person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which he shall be guilty within the said territories.

Punishment of offences committed within the said territories

¹This in the date when Ranbir Dand Bidhi of Samvat 1949 had come into force.

3. Any person liable, by any law passed by His Highness the Maharaja Bahadur, ¹[or by the legislature of the State] to be tried for an offence committed beyond the limits of the said territories shall be dealt with according to the provisions of this Code for any act committed beyond the said territories in the same manner as if such act had been committed within the said territories.

Punishment of offences committed beyond, but which by law may be tried within the territories

Extension of Code to extra-territorial offences.

4. The provisions of this Code apply also to any offence committed by—

(1) any subject of His Highness in any place without and beyond the Jammu and Kashmir State.

EXPLANATION.—In this section the word “offence” includes every act committed outside ²British India which, if committed in ²British India, would be punishable under this Code.

Illustrations.

(1) A, a coolie, who is a State subject, commits a murder in Uganda. He can be tried and convicted of murder in any place in the State in which he may be found.

(b) B, a ²British subject living in Indore, instigates E, to commit a murder in Bombay. B is guilty of abetting murder.

5. Omitted.

CHAPTER II.

GENERAL EXPLANATIONS.

6. Throughout this Code every definition of an offence, every penal provision and every illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the chapter entitled “General Exceptions,” though those exceptions are not repeated in such definition, penal provision or illustration.

Definition in the Code to be understood subject to exceptions.

Illustrations.

(a) The sections in this Code, which contain definitions of offences, do not express that a child under seven years of age cannot commit such offences; but the definitions are to be understood subject to the general exception which provides that nothing shall be an offence which is done by a child under seven years of age.

¹ Words in brackets in section 3 added by Act X of 1996 published in Government Gazette dated 15th March 1996.

² In the Explanation to section 4, the words “British India” in two places appear to have been inadvertently retained, instead of “the State”. Similarly in illustration (b) in place of “British subject” the words should be “Jammu and Kashmir State subject”.

(b) A, a police officer, without warrant, apprehends Z who has committed murder. Here A is not guilty of the offence of wrongful confinement; for he was bound by law to apprehend Z and therefore the case falls within the general exception which provides that "nothing is an offence which is done by a person who is bound by law to do it."

7. Every expression which is explained in any part of this Code, is used in every part of this Code in conformity with the explanation.

Sense of expression
once explained.

8. The pronoun "he" and its derivatives are used of any person, whether male or female.

Gender.

9. Unless the contrary appears from the context, words importing the singular number include the plural number, and words importing the plural number include the singular number.

Number.

10. The word "man" denotes a male human being of any age: the word "woman" denotes a female human being of any age.

"Man." "Woman"

11. The word "person" includes any Company or Association, or body of persons, whether incorporated or not.

"Person."

12. The word "public" includes any class of the public or any community.

"Public."

13. The word "His Highness" denotes His Highness the Maharaja Bahadur of Jammu and Kashmir.

"His Highness."

13-A. The word "King" denotes the Sovereign for the time being of the United Kingdom of Great Britain and Ireland.

"King"

14. The words "State servant" denote all officers or servants continued, appointed or employed in the Jammu and Kashmir State by or under the authority of His Highness the Maharaja Bahadur ¹[or Government].

"State servant".

15. The words "Jammu and Kashmir State" denote the territories which are or may become vested in His Highness the Maharaja Bahadur.

"Jammu and Kashmir State".

16. The words "Government of India" denote the Governor General of India in Council, or during the absence of the Governor General of India from his Council, the President in Council, or the Governor General of India alone, as regards the powers which may be lawfully exercised by them or him respectively.

"Government of India."

¹ In section 14 word "or Government" added at the end vide Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

17. The words "His Highness' Government" denote the person or persons authorised by law to administer executive Government in any part of Jammu and Kashmir State.

18. Omitted.

19. The word "Judge" denotes not only every person who is officially designated as a Judge, but also every person

who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or

who is one of a body of persons, which body of persons is empowered by law to give such a judgment.

Illustrations.

(a) A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment with or without appeal, is a Judge.

(b) A Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another Court, is not a Judge.

20. The words "Court of Justice" denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

21. The words "public servant" denote a person falling under any of the descriptions hereinafter following, namely:—

FIRST.—Every Civil servant of His Highness;

SECOND.—Every Commissioned Officer in the Military while serving under the Government of His Highness;

THIRD.—Every Judge;

FOURTH.—Every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take, charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court; and every person specially authorised by a Court of Justice to perform any of such duties;

FIFTH.—Every juryman, assessor or member of a panchayat assisting a Court of Justice or public servant;

SIXTH.—Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority;

SEVENTH.—Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

EIGHTH.—Every officer of Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

¹NINTH.—Every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of His Highness [or Government] or to make any survey, assessment or contract on behalf of His Highness or to execute any revenue-process, or to investigate or to report, on any matter affecting the pecuniary interests of His Highness or to make, authenticate or keep any document relating to the pecuniary interests of His Highness or to prevent the infraction of any law for the protection of the pecuniary interests of His Highness and every officer in the service or pay of His Highness or remunerated by fees or commission for the performance of any public duty;

TENTH.—Every officer whose duty it is, as such officer to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district;

²[ELEVENTH.—Every British Indian Government servant in the Telegraph, Postal, Railway or Supply and Transport Department or in any other Department which His Highness' Government may, by notification, hereafter specify, who is posted, and when he is performing his legitimate duties, within the territories of the Jammu and Kashmir State.]

TWELFTH.—Every servant of the Department of Devasthan;

THIRTEENTH.—Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

FOURTEENTH.—Every officer or servant employed by the Municipal Committee, whether for the whole or part of his time, and every Member of the Committee.

EXPLANATION 1.—Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

EXPLANATION 2.—Wherever the words "public servant" occur, they shall be understood of every person who is in ac-

¹In section 21 clause 9 words in brackets added *vide* Act X of 1906 published in Government Gazette dated 15th Bhadon 1906

²Cause eleventh substituted *vide* Act XIX of 1907 published in the Government Gazette dated 4th Magh, 1907.

tual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

EXPLANATION 3.—The word “election” denotes an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of selection to which is by, or under, any law prescribed as by election.

22. The words “movable property” are intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to any thing which is attached to the earth.

“Movable property.”

23. “Wrongful gain” is gain by unlawful means of property to which the person gaining is not legally entitled.

“Wrongful gain”

“Wrongful loss” is the loss by unlawful means of property to which the person losing it is legally entitled.

“Wrongful loss.”

A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.

Gaining wrongfully.

Losing wrongfully.

24. Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing “dishonestly”.

“Dishonestly.”

25. A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.

“Fraudulently.”

26. A person is said to have “reason to believe” a thing if he has sufficient cause to believe that thing but not otherwise.

“Reason to believe”

27. When property is in the possession of a person’s wife, clerk or servant, on account of that person, it is in that person’s possession within the meaning of this Code.

Property in possession of wife, clerk or servant

EXPLANATION.—A person employed temporarily or on a particular occasion in the capacity of a clerk or servant, is a clerk or servant within the meaning of this section.

28. A person is said to “counterfeit” who causes one thing to resemble another thing, intending by means of that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised.

“Counterfeit.”

EXPLANATION 1.—It is not essential to counterfeiting

that the imitation should be exact.

EXPLANATION 2.—When a person causes one thing to resemble another thing, and the resemblance is such that a person might be deceived thereby, it shall be presumed, until the contrary is proved, that the person so causing the one thing to resemble the other thing intended by means of that resemblance to practise deception or knew it to be likely that deception would thereby be practised.

29. The word “document” denotes any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used or which may be used, as evidence of that matter.

“Document.”

EXPLANATION 1.—It is immaterial by what means or upon what substance the letters, figures or marks are formed, or whether the evidence intended for, or may be used in, a Court of Justice, or not.

Illustrations.

A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document.

A cheque upon a banker is a document.

A power of attorney is a document.

A map or plan which is intended to be used or which may be used as evidence, is a document.

A writing containing directions or instructions is a document.

EXPLANATION 2.—Whatever is expressed by means of letters, figures or marks as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures or marks within the meaning of this section, although the same may not be actually expressed.

Illustration.

A writes his name on the back of a bill of exchange payable to his order. The meaning of the endorsement, as explained by mercantile usage, is that the bill is to be paid to the holder. The endorsement is a document and must be construed in the same manner as if the words “pay to the holder” or words to that effect had been written over the signature.

30. The words “valuable security” denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right.

“Valuable security”.

Illustration.

A writes his name on the back of a bill of exchange. As the effect of this endorsement is to transfer the right to the bill to any person who may become the lawful holder of it, the endorsement is a “valuable security.”

'A will'.

31. The words "a will" denote any testamentary document.

Words referring to acts include illegal omission.

32. In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions.

"Act"

"Omission".

33. The word "act" denotes as well a series of acts as a single act: the word "omission" denotes as well a series of omissions as a single omission.

Acts done by several persons in furtherance of common intention.

34. When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

When such an Act is criminal by reason of its being done with criminal knowledge or intention

35. Whenever an act which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.

Effect caused partly by act and partly by omission.

36. Wherever the causing of a certain effect, or an attempt to cause that effect, by an act or by an omission, is an offence, it is to be understood that the causing of that effect partly by an act and partly by an omission is the same offence.

Illustration.

A intentionally causes Z's death, partly by illegally omitting to give Z food, and partly by beating Z. A has committed murder.

37. When an offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence.

Co-operation by doing one of several acts constituting an offence.

Illustrations.

(a) A and B agree to murder Z by severally and at different times giving him small doses of poison. A and B administer the poison according to the agreement with intent to murder Z. Z dies from the effects of the several doses of poison so administered to him. Here A and B intentionally co-operate in the commission of murder and as each of them does an act by which the death is caused, they are both guilty of the offence though their acts are separate.

(b) A and B are joint jailors, and, as such have the charge of Z, a prisoner, alternately for six hours at a time. A and B intending to cause Z's death, knowingly co-operate in causing that effect by illegally omitting,

each during the time of his attendance, to furnish Z with food supplied to them for that purpose. Z dies of hunger. Both A and B are guilty of the murder of Z.

(c) A, a jailor, has the charge of Z, a prisoner. A intending to cause Z's death, illegally omits to supply Z with food; in consequence of which Z is much reduced in strength, but the starvation is not sufficient to cause his death. A is dismissed from his office, and B succeeds him. B, without collusion or co-operation with A, illegally omits to supply Z with food knowing that he is likely thereby to cause Z's death. Z dies of hunger. B is guilty of murder, but, as A did not co-operate with B, A is guilty only of an attempt to commit murder.

38. Where several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act.

Persons concerned in criminal acts may be guilty of different offences.

Illustration.

A attacks Z under such circumstances of grave provocation that his killing of Z would be only culpable homicide not amounting to murder. B having ill-will towards Z and intending to kill him, and not having been subject to the provocation, assists A in killing Z. Here though A and B are both engaged in causing Z's death, B is guilty of murder, and A is guilty only of culpable homicide.

39. A person is said to cause an effect "voluntarily" when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.

"Voluntarily"

Illustration.

A sets fire, by night, to an inhabited house in a large town for the purpose of facilitating robbery, and thus causes the death of a person. Here A may not have intended to cause death, and may even be sorry that the death has been caused by his act: yet, if he knew that he was likely to cause death he has caused death voluntarily.

40. Except in the chapter and sections mentioned in clauses 2 and 3 of this section, the word "offence" denotes a thing made punishable by this Code.

"Offence"

In chapter IV, chapter V-A and in the following sections, namely, sections 64, 65, 66, 67, 71, 109, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389 and 445, the word "offence" denotes a thing punishable under this Code, or under any special or local law as hereinafter defined.

And in sections 141, 176, 177, 201, 202, 212, 216, and 441 the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.

- 41.** A "special law" is a law applicable to a particular subject.
 "Special law."
- 42.** A "local law" is a law applicable only to a particular part of the Jammu and Kashmir State.
 "Local law."
- 43.** The word "illegal" is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action: and a person is said to be "legally bound to do" whatever it is illegal in him to omit.
 "Illegal."
 "Legally bound to do."
- 44.** The word "injury" denotes any harm whatever illegally caused to any person, in body, mind, reputation or property.
 "Injury."
- 45.** The word "life" denotes the life of a human being unless the contrary appears from the context.
 "Life."
- 46.** The word "death" denotes the death of a human being, unless the contrary appears from the context.
 "Death".
- 47.** The word "animal" denotes any living creature, other than a human being.
 "Animal."
- 48.** The word "vessel" denotes anything made for the conveyance by water of human beings or of property.
 "Vessel."
- 49.** Wherever the word "year" or the word "month" is used, it is to be understood that the year or the month is to be reckoned according to the Bikrimi era.
 "Years."
 "Month."
- 50.** The word "section" denotes one of those portions of a chapter of this Code which are distinguished by prefixed numeral figures.
 "Section."
- 51.** The word "oath" includes a solemn affirmation substituted by law for an oath, and any declaration required or authorised by law to be made before a public servant or to be used for the purpose of proof, whether in a Court of Justice or not.
 "Oath."
- 52.** Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention.
 "Good faith."
- 52-A.** The word "stamp" denotes every stamp issued by ¹[the Government] for revenue purposes.
 "Stamp."

¹In section 52-A "the Government" substituted for "His Highness the Maharaja Bahadur" vide Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

CHAPTER III.

OF PUNISHMENTS.

✓ **53.** The punishments to which offenders are liable under the provisions of this Code are,—
 "Punishments."

FIRST.—Death;

SECONDLY.—Imprisonment, which is of two descriptions, namely:—

(1) Rigorous, that is, with hard labour;

(2) Simple;

THIRDLY.—Whipping;

FOURTHLY.—Forfeiture of property;

FIFTHLY.—Fine;

SIXTHLY.—Imprisonment for life.

54. In every case in which sentence of death shall have been passed, His Highness the Maharaja Bahadur may, without the consent of the offender, commute the punishment for any other punishment provided by this Code.

Commutation of sentence of death.

55. In every case in which sentence of imprisonment for life shall have been passed, His Highness the Maharaja Bahadur may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years.

Commutation of sentence of imprisonment for life.

56. Omitted.

57. In calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years.

Fractions of terms of punishment.

58. Omitted.

59. Omitted.

✓ **60.** In every case in which an offender is punishable with imprisonment which may be of either description, it shall be competent to the Court which sentences such offender to direct in the sentence that such imprisonment shall be wholly rigorous, or that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple.

Sentence may be (in certain cases of imprisonment) wholly or partly rigorous or simple.

61. In every case in which a person is convicted of an offence for which he is liable to forfeiture of all his property, the offender shall be incapable of acquiring any property ex-

Sentence of forfeiture of property.

cept for the benefit of His Highness the Maharaja Bahadur until he shall have undergone the punishment awarded or the punishment to which it shall have been commuted or until he shall have been pardoned.

Illustration.

A, being convicted of waging war against His Highness, is liable to forfeiture of all his property. After the sentence, and whilst the same is in force, A's father dies, leaving an estate which but for the forfeiture, would become the property of A. The estate becomes the property of His Highness.

62. Whenever any person is convicted of an offence punishable with death, the Court may adjudge that all his property movable or immovable shall be forfeited to His Highness; and whenever any person shall be convicted of any offence for which he shall be imprisoned for life or sentenced to imprisonment for a term of seven years or upwards, the Court may adjudge that the rents or profits of all his movable and immovable estate during the period of his imprisonment, shall be forfeited to His Highness subject to such provisions for his family and dependants as His Highness may think fit to allow during such period.

63. Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive.

64. In every case of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment,

and in every case of an offence punishable with imprisonment or fine, or with fine only, in which the offender is sentenced to a fine,

it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence.

65. The term for which the Court directs the offender to be imprisoned in default of payment of a fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine.

Forfeiture of property, in respect of offenders punishable with death, imprisonment for life or imprisonment for 7 years or more.

Sentence of imprisonment for non-payment of fine

Limit to imprisonment for non-payment of fine when imprisonment and fine awardable.

66. The imprisonment which the Court imposes in default of payment of a fine may be of any description to which the offender might have been sentenced for the offence.

Description of imprisonment for non-payment of fine.

67. If the offence be punishable with fine only the imprisonment which the Court imposes in default of payment of the fine shall be simple, and, the term for which the Court directs the offender to be imprisoned, in default of payment of fine, shall not exceed the following scale, that is to say for any term not exceeding two months when the amount of the fine shall not exceed fifty rupees, and for any term not exceeding four months when the amount shall not exceed one hundred rupees, and for any term not exceeding six months in any other case.

Imprisonment for non-payment of fine when offence punishable with fine only.

68. The imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law.

Imprisonment to terminate on payment of fine.

69. If, before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate.

Termination of imprisonment on payment of proportional part of fine.

Illustration.

A is sentenced to a fine of one hundred rupees and to four months' imprisonment in default of payment. Here, if seventy-five rupees of the fine be paid or levied before the expiration of one month of the imprisonment, A will be discharged as soon as the first month has expired. If seventy-five rupees be paid or levied at the time of the expiration of the first month, or any later time while A continues in imprisonment, A will be immediately discharged. If fifty rupees of the fine be paid or levied before the expiration of two months of the imprisonment, A will be discharged as soon as the two months are completed. If fifty rupees be paid or levied at the time of the expiration of those two months, or at any later time while A continues in imprisonment, A will be immediately discharged.

70. The fine, or any part thereof which remains unpaid, may be levied at any time within six years after the passing of the sentence, and if, under the sentence, the offender be liable to imprisonment for a longer period than six years, than at any time previous to the expiration of that period; and the death of the offender does not discharge from the liability any property which would, after his death, be legally liable for his debts.

Fine leviable within six years, or during imprisonment.

Death not to discharge property from liability.

71. Where anything which is an offence is made up of parts, any of which parts is itself an offence the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.

Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or

where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence,

the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences.

Illustrations.

(a) A gives Z fifty strokes with a stick. Here A may have committed the offence of voluntarily causing hurt to Z by the whole beating, and also by each of the blows which make up the whole beating. If A were liable to punishment for every blow, he might be imprisoned for fifty years, one for each blow. But he is liable only to one punishment for the whole beating.

(b) But if, while A is beating Z, Y interferes, and A intentionally strikes Y, here, as the blow given to Y is no part of the act whereby A voluntarily causes hurt to Z. A is liable to one punishment for voluntarily causing hurt to Z, and to another for the blow given to Y.

72. In all cases in which judgment is given that a person is guilty of one of several offences specified in the judgment, but that it is doubtful of which of these offences he is guilty, the offender shall be punished for the offence for which the lowest punishment is provided if the same punishment is not provided for all.

Punishment of person guilty of one or several offences, the judgement stating that it is doubtful of which.

73. Whenever any person is convicted of an offence for which under this Code the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say—

Solitary confinement.

a time not exceeding one month if the term of imprisonment shall not exceed six months:

a time not exceeding two months if the term of imprisonment shall exceed six months and shall not exceed one year:

a time not exceeding three months if the term of imprisonment shall exceed one year.

74. In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods, and when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

Limit of solitary confinement.

75. Whoever, having been convicted,—

Enhanced punishment for certain offences under chapter XII or chapter XVII after previous conviction.

(a) by a Court in Jammu and Kashmir State, of an offence punishable under chapter XII or chapter XVII of this Code with imprisonment of either description for a term of three years or upwards, or

(b) by a Court in British India or in the territories of any Native Prince or State in India acting under the general or special authority of the Governor General in Council or of any Local Government, of an offence which would, if committed in Jammu and Kashmir State, have been punishable under those chapters of this Code with like imprisonment for the like term,

shall be guilty of any offence punishable under either of those chapters with like imprisonment for the like term, shall be subject for every such subsequent offence to imprisonment for life, or to imprisonment of either description for a term which may extend to ten years.

CHAPTER IV.

GENERAL EXCEPTIONS.

76. Nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be, bound by law to do it.

Act done by a person bound, or by mistake of fact believing himself bound by law.

Illustrations.

(a) A, a soldier, fires on a mob by the order of his superior officer, in conformity with the commands of the law. A has committed no offence.

(b) A, an officer of a Court of Justice, being ordered by that Court to arrest Y, and, after due enquiry, believing Z to be Y, arrests Z. A has committed no offence.

77. Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.

78. Nothing which is done in pursuance of, or which is warranted by the judgment or order of, a Court of Justice, if done whilst such judgment or order remains in force, is an offence, notwithstanding the Court may have had no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the Court had such jurisdiction.

79. Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law, in doing it.

Illustration.

A sees Z commit what appears to A to be a murder. A, in the exercise, to the best of his judgment, exerted in good faith, of the power which the law gives to all persons of apprehending murderers in the act, seizes Z, in order to bring Z before the proper authorities. A has committed no offence, though it may turn out that Z was acting in self defence.

80. Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.

Illustration.

A is at work with a hatchet; the head flies off and kills a man who is standing by. Here, if there was no want of proper caution on the part of A, his act is excuseable and not an offence.

81. Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.

EXPLANATION.—It is a question of fact in such a case whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.

Illustrations.

(a) A, the captain of a steam vessel, suddenly and without any fault or negligence on his part, finds himself in such a position that, before he can stop his vessel, he must inevitably run down a boat B with twenty or thirty passengers on board, unless he changes the course of his vessel, and that, by changing his course, he must incur risk of running down a boat C with only two passengers on board, which he may possibly clear. Here, if A alters his course without any intention to run down the boat C and in good faith for the purpose of avoiding the danger to the passengers in the boat B, he is not guilty of an offence, though he may run down the boat C by doing an act which he knew was likely to cause that effect, if it be found as matter of fact that the danger which he intended to avoid was such as to excuse him in incurring the risk of running down C.

(b) A, in a great fire, pulls down houses in order to prevent the conflagration from spreading. He does this with the intention in good faith of saving human life or property. Here, if it be found that the harm to be prevented was of such a nature and so imminent as to excuse A's act, A is not guilty of the offence.

82. Nothing is an offence which is done by a child under seven years of age.

Act of a child under seven years of age.

83. Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

Act of a child above seven and under twelve of immature understanding.

84. Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to

Act of a person of unsound mind.

law.

85. Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law: provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

Act of a person incapable of judgement by reason of intoxication caused against his will

86. In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will.

Offence requiring a particular intent or knowledge, committed by one who is intoxicated

will.

87. Nothing which is not intended to cause death, or grievous hurt, and which is not known by the doer to be likely to cause death, or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person, above eighteen years of age, who has given consent, whether express or implied, to suffer that harm or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take risk of that harm.

Act not intended and not known to be likely to cause death or grievous hurt done by consent.

Illustration.

A and Z agree to fence with each other for amusement. This agreement implies the consent of each to suffer any harm which in the course of such fencing may be caused without foul play; and if A, while playing fairly, hurts Z. A commits no offence.

88. Nothing, which is not intended to cause death, is an offence by reason of any harm, which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.

Act not intended to cause death done by consent in good faith for person's benefit.

Illustration.

A, a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under a painful complaint, but not intending to cause Z's death, and intending, in good faith, Z's benefit, performs that operation on Z, with Z's consent. A has committed no offence.

89. Nothing which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause or be known by the doer to be likely to cause to that person: Provided—

Act done in good faith for benefit of child or insane person, by or by consent of guardian.

FIRST.—That this exception shall not extend to the intentional causing of death, or to the attempting to cause death;

Provisos.

SECONDLY.—That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt; or the curing of any grievous disease or infirmity;

THIRDLY.—That this exception shall not extend to the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity;

FOURTHLY.—That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

Illustration.

A, in good faith, for his child's benefit without his child's consent, has his child cut for the stone by a surgeon, knowing it to be likely that the operation will cause the child's death, but not intending to cause the child's death. A is within the exception, inasmuch as his object was the cure of the child.

90. A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or

if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or

unless the contrary appears from the context if the consent is given by a person who is under twelve years of age.

91. The exceptions in sections 87, 88 and 89 do not extend to acts which are offences independently of any harm which they may cause, or be intended to cause or be known to be likely to cause, to the person giving the consent, or on whose behalf the consent is given.

Illustration.

Causing miscarriage (unless caused in good faith for the purpose of saving the life of the woman) is an offence independently of any harm which it may cause or be intended to cause to the woman. Therefore, it is not an offence "by reason of such harm" and the consent of the woman or of her guardian to the causing of such miscarriage does not justify the act.

92. Nothing is an offence by reason of any harm which it may cause to a person for whose benefit it is done in good faith, even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is in-

capable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit: Provided—

FIRST.—That this exception shall not extend to the intentional causing of death, or the attempting to cause death;
Provisos.

SECONDLY.—That this exception shall not extend to the doing of anything which the person doing it, knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt or the curing of any grievous disease or infirmity;

THIRDLY.—That this exception shall not extend to the voluntary causing of hurt, or to the attempting to cause hurt, for any purpose other than the preventing of death or hurt;

FOURTHLY.—That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

Illustrations.

(a) Z is thrown from his horse, and is insensible. A, a surgeon, finds that Z requires to be trepanned. A, not intending Z's death, but in good faith, for Z's benefit, performs the trepan before Z recovers his power of judging for himself. A has committed no offence.

(b) Z is carried off by a tiger. A fires at the tiger knowing it to be likely that the shot may kill Z, but not intending to kill Z, and in good faith intending Z's benefit. A's ball gives Z a mortal wound. A has committed no offence.

(c) A, a surgeon, sees a child suffer an accident which is likely to prove fatal unless an operation be immediately performed. There is not time to apply to the child's guardian. A performs the operation in spite of the entreaties of the child, intending, in good faith, the child's benefit. A has committed no offence.

(d) A is in a house which is on fire, with Z, a child. People below hold out a blanket. A drops the child from the housetop knowing it to be likely that the fall may kill the child, but not intending to kill the child, and intending, in good faith, the child's benefit. Here, even if the child is killed by the fall, A has committed no offence.

EXPLANATION.—Mere pecuniary benefit is not benefit within the meaning of sections 88, 89 and 92.

93. No communication made in good faith is an offence by reason of any harm to the person to whom it is made, if it is made for the benefit of that person.
Communication made in good faith.

Illustration.

A, a surgeon, in good faith, communicates to a patient his opinion that he cannot live. The patient dies in consequence of the shock. A has committed no offence, though he knew it to be likely that the communication might cause the patient's death.

94. Except murder, and offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence: Provided the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

EXPLANATION 1.—A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits, knowing their character, is not entitled to the benefit of this exception, on the ground of his having been compelled by his associates to do anything that is an offence by law.

EXPLANATION 2.—A person seized by a gang of dacoits, and forced by threat of instant death, to do a thing which is an offence by law; for example, a smith compelled to take his tools and to force the door of a house for the dacoits to enter and plunder it, is entitled to the benefit of this exception.

95. Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

Of the Right of Private Defence.

96. Nothing is an offence which is done in the exercise of the right of private defence.

97. Every person has a right, subject to the restrictions contained in section 99, to defend—

FIRST.—His own body, and the body of any other person, against any offence affecting the human body;

SECONDLY.—The property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass.

98. When an act, which would otherwise be a certain offence is not that offence, by reason of the youth, the want of maturity of understanding, the unsoundness of mind, or the intoxication of the person doing that act or

by reason of any misconception on the part of that person, every person has the same right of private defence against that act which he would have if the act were that offence.

Illustrations.

(a) Z, under the influence of madness, attempts to kill A; Z is guilty of no offence. But A has the same right of private defence which he would have if Z were sane.

(b) A enters by night a house which he is legally entitled to enter. Z, in good faith, taking A for a house-breaker, attacks A: Here Z, by attacking A under this misconception, commits no offence. But A has the same right of private defence against Z, which he would have if Z were not acting under that misconception.

99. There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law.

Acts against which there is no right of private defence.

There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office though that direction may not be strictly justifiable by law.

There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.

The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

Extent to which the right may be exercised.

EXPLANATION 1.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by a public servant, as such, unless he knows, or has reason to believe, that the person doing the act is such public servant.

EXPLANATION 2.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or if he has authority in writing, unless he produces such authority, if demanded.

100. The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the

When the right of private defence of the body extends to causing death.

exercise of the right be of any of the descriptions hereinafter enumerated, namely:—

FIRST.—Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

SECONDLY.—Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

THIRDLY.—An assault with the intention of committing rape;

FOURTHLY.—An assault with the intention of gratifying unnatural lust;

FIFTHLY.—An assault with the intention of kidnapping or abducting;

SIXTHLY.—An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

101. If the offence be not of any of the descriptions enumerated in the last preceding section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in section 99 to the voluntary causing to the assailant of any harm other than death.

102. The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence though the offence may not have been committed; and it continues as long as such apprehension of danger to the body continues.

103. The right of private defence of property extends, under the restrictions mentioned in section 99, to the voluntary causing of death or of any other harm to the wrong-doer, if the offence, the committing of which, or the attempting to commit which occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated, namely:—

FIRST.—Robbery;

SECONDLY.—House-breaking by night;

THIRDLY.—Mischief by fire committed on any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or as a place for the custody of property;

FOURTHLY.—Theft, mischief or house-trespass, under such circumstances as may reasonably cause apprehension that

death or grievous hurt will be the consequence, if such right of private defence is not exercised.

104. If the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right of private defence, be theft, mischief, or criminal trespass, not of any of the descriptions enumerated in the last preceding section, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in section 99, to the voluntary causing to the wrong-doer of any harm other than death.

When such right extends to causing any harm other than death,

105. The right of private defence of property commences when a reasonable apprehension of danger to the property commences.

Commencement and continuance of the right of private defence of property.

The right of private defence of property against theft continues till the offender has effected his retreat with the property or either the assistance of the public authorities is obtained, or the property has been recovered.

The right of private defence of property against robbery continues as long as the offender causes or attempts to cause to any person death or hurt or wrongful restraint or as long as the fear of instant death or of instant hurt or of instant personal restraint continues.

The right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.

The right of private defence of property against house-breaking by night continues as long as the house-trespass which has been begun by such house-breaking continues.

106. If in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk.

Right of private defence against deadly assault when there is risk of harm to innocent person.

Illustration.

A is attacked by a mob who attempt to murder him. He cannot effectually exercise his right of private defence without firing on the mob, and he cannot fire without risk of harming young children who are mingled with the mob. A commits no offence if by so firing he harmed any of the children

CHAPTER V.

OF ABETMENT.

107. A person abets the doing of a thing, who—
Abetment of a thing.

FIRST.—Instigates any person to do that thing; or,

SECONDLY.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or,

THIRDLY.—Intentionally aids, by any act or illegal omission, the doing of that thing.

EXPLANATION 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration.

A, a public officer, is authorised by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

EXPLANATION 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

108. A person abets an offence who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.
Abettor.

EXPLANATION 1.—The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

EXPLANATION 2.—To constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

Illustrations.

(a) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.

(b) A instigates B to murder D. B in pursuance of the instigation stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

EXPLANATION 3.—It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

Illustrations.

(a) A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence, if committed by a person capable by law of committing an offence, and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.

(b) A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act in the absence of A and thereby causes Z's death. Here, though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder, and he is therefore subject to the punishment of death.

(c) A instigates B to set fire to a dwelling-house. B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling-house, and is liable to the punishment provided for that offence.

(d) A, intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possession. A induces B to believe that the property belongs to A. B takes the property out of Z's possession, in good faith, believing it to be A's property. B, acting under this misconception, does not take dishonestly, and therefore does not commit theft. But A is guilty of abetting theft and is liable to the same punishment as if B had committed theft.

EXPLANATION 4.—The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

Illustration.

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B's instigation. B is liable to be punished for his offence with the punishment for murder; and, as A instigated B to commit the offence, A is also liable to the same punishment.

EXPLANATION 5.—It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engage in the conspiracy in pursuance of which the offence is committed.

Illustration.

A concert with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C, mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the

poison; Z dies in consequence. Here, though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered. C has therefore committed the offence defined in this section, and is liable to the punishment for murder.

108-A. A person abets an offence within the meaning of this Code who, in Jammu and Kashmir State, abets the commission of any act without and beyond Jammu and Kashmir State which would constitute an offence if committed in Jammu and Kashmir State.

Abetment in Jammu and Kashmir State of offences outside it.

Illustration.

A, in Jammu and Kashmir State, instigates B, a foreigner in Goa, to commit a murder in Goa. A is guilty of abetting murder.

109. Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.

EXPLANATION.—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

Illustrations.

(a) A offers a bribe to B, a public servant, as reward for showing A some favour in exercise of B's official function. B accepts the bribe. A has abetted the offence defined in section 161.

(b) A instigates B to give false evidence. B, in consequence of the instigation, commits that offence. A is guilty of abetting that offence, and is liable to the same punishment as B.

(c) A and B conspire to poison Z. A, in pursuance of the conspiracy, procures the poison and delivers it to B in order that he may administer it to Z. B, in pursuance of the conspiracy, administers the poison to Z in A's absence and thereby causes Z's death. Here B is guilty of murder. A is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.

110. Whoever abets the commission of an offence shall, if the person abetted does the act with a different intention or knowledge from that of the abettor, be punished with the punishment provided for the offence which would have been committed if the act had been done with the intention or knowledge of the abettor and with no other,

Punishment of abetment if person abetted does act with different intention from that of abettor

111. When an act is abetted and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it:

Liability of abettor when one act abetted and different act done.

Provided the act done was a probable consequence of the abetment and was committed under the influence of the instigation, or with the aid or in pursuance of the conspiracy which constituted the abetment.

Provided

Illustrations.

(a) A instigates a child to put poison into the food of Z, and gives him poison for that purpose. The child, in consequence of the instigation, by mistake puts the poison into the food of Y, which is by the side of that of Z. Here if the child was acting under the influence of A's instigation, and the act done was under the circumstances a probable consequence of the abetment, A is liable in the same manner and to the same extent as if he had instigated the child to put the poison into the food of Y.

(b) A instigates B to burn Z's house. B sets fire to the house and at the same time commits theft of property there. A, though guilty of abetting the burning of the house, is not guilty of abetting the theft; for the theft was a distinct act, and not a probable consequence of the burning.

(c) A instigates B and C to break into an inhabited house at midnight for the purpose of robbery, and provides them with arms for that purpose. B and C break into the house, and being resisted by Z, one of the inmates, murder Z. Here if that murder was the probable consequence of the abetment, A is liable to the punishment provided for murder.

112. If the act for which the abettor is liable under the last preceding section is committed in addition to the act abetted, and constitutes a distinct offence, the abettor is liable to punishment for each of the offences.

Abettor when liable to cumulative punishment for act abetted and for act done.

Illustration.

A instigates B to resist by force a distress made by public servant B, in consequence, resists that distress. In offering the resistance, B voluntarily causes grievous hurt to the officer executing the distress. As B has committed both the offence of resisting the distress, and the offence of voluntarily causing grievous hurt, B is liable to punishment for both these offences; and, if A knew that B was likely voluntarily to cause grievous hurt in resisting the distress, A will also be liable to punishment for each of the offences.

113. When an act is abetted with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment, causes a different effect from that intended by the abettor, the abettor is liable for the effect caused, in the same manner and to the same extent as if he had abetted the act with the intention of causing that effect, provided he knew that the act abetted was likely to cause that effect.

Liability of abettor for an effect caused by the act abetted different from that intended by the abettor.

Illustration.

A instigates B to cause grievous hurt to Z. B, in consequence of the instigation, causes grievous hurt to Z. Z dies in consequence. Here, if A knew that the grievous hurt abetted was likely to cause death, A is liable to be punished with the punishment provided for murder.

114. Whenever any person, who if absent would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.

Abettor present when offence is committed.

115. Whoever abets the commission of an offence punishable with death or imprisonment for life, shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

and if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

*Abetment of offence punishable with death or imprisonment for life—
if offence not committed;*

if act causing harm be done in consequence.

Illustration.

A instigates B to murder Z. The offence is not committed. If B had murdered Z, he would have been subject to the punishment of death or imprisonment for life. Therefore A is liable to imprisonment for a term which may extend to seven years and also to a fine; and, if any hurt be done to Z in consequence of the abetment, he will be liable to imprisonment for a term which may extend to fourteen years, and to fine.

116. Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of any description provided for that offence for a term which may extend to one-fourth part of the longest term provided for that offence; or with such fine as is provided for that offence, or with both;

Abetment of offence punishable with imprisonment—if offence be not committed;

and if the abettor or the person abetted is a public servant whose duty it is to prevent the commission of such offence, the abettor shall be punished with imprisonment of any description provided for that offence, for a term which may extend to one-half of the longest

If abettor or person abetted be a public servant whose duty it is to prevent offence.

term provided for that offence, or with such fine as is provided for the offence, or with both.

Illustrations.

(a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B refuses to accept the bribe. A is punishable under this section.

(b) A instigates B to give false evidence. Here, if B does not give false evidence, A has nevertheless committed the offence defined in this section, and is punishable accordingly.

(c) A, a police-officer, whose duty it is to prevent robbery, abets the commission of robbery. Here, though the robbery be not committed, A is liable to one-half of the longest term of imprisonment provided for that offence, and also to fine.

(d) B abets the commission of a robbery by A, a police-officer, whose duty it is to prevent that offence. Here, though the robbery be not committed, B is liable to one-half of the longest term of imprisonment provided for the offence of robbery, and also to fine.

117. Whoever abets the commission of an offence by the public generally or by any number or class of persons exceeding ten, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Abetting commission of offence by the public or by more than ten persons

Illustration.

A affixes in a public place a placard instigating a sect consisting of more than ten members to meet at a certain time and place, for the purpose of attacking the members of an adverse sect, while engaged in a procession. A has committed the offence defined in this section.

118. Whoever intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with death or imprisonment for life—

Concealing design to commit offence punishable with death or imprisonment for life—

voluntarily conceals by any act or illegal omission, the existence of a design to commit such offence or makes any representation which he knows to be false respecting such design,

shall, if that offence be committed, be punished with imprisonment of either description for a term which may extend to seven years, or, if the offence be not committed, with imprisonment of either description for a term which may extend to three years; and in either case shall also be liable to fine.

if offence be committed; if offence be not committed.

Illustrations.

A, knowing that dacoity is about to be committed at B, falsely informs the Magistrate that a dacoity is about to be committed at C, a place in an opposite direction, and thereby misleads the Magistrate with intent to facilitate the

commission of the offence. The dacoity is committed at B in pursuance of the design. A is punishable under this section.

119. Whoever, being a public servant intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence which it is his duty as such public servant to prevent,

Public servant concealing design to commit offence which it is his duty to prevent—

voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design,

shall, if the offence be committed, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the longest term of such imprisonment, or with such fine as is provided for that offence, or with both;

or, if the offence be punishable with death or imprisonment for life, with imprisonment of either description for a term which may extend to ten years;

If offence be punishable with death etc.;

or, if the offence be not committed, shall be punished with imprisonment of any description provided for the offence for a term which may extend to one-fourth part of the longest term of such imprisonment or with such fine as is provided for the offence, or with both.

If offence be not committed

Illustration.

A, an officer of Police, being legally bound to give information of all designs to commit robbery which may come to his knowledge, and knowing that B designs to commit robbery, omits to give such information, with intent to facilitate the commission of that offence. Here A has by an illegal omission concealed the existence of B's design, and is liable to punishment according to the provision of this section

120. Whoever, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with imprisonment,

Concealing design to commit offence punishable with imprisonment—

voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design,

shall, if the offence be committed, be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth, and, if the offence be not committed, to one-eighth, of the longest term

If offence be committed;
If offence be not committed.

of such imprisonment, or with such fine as is provided for the offence, or with both.

CHAPTER V-A.

CRIMINAL CONSPIRACY.

120-A. When two or more persons agree to do, or cause to be done,—
Definition of criminal conspiracy.

- (1) an illegal act, or
 - (2) an act which is not illegal by illegal means,
- such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

EXPLANATION.—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

120-B. (1) Whoever is a party to a criminal conspiracy, to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine, or with both.

CHAPTER VI.

OF OFFENCES AGAINST THE STATE.

121. Whoever wages war against His Highness or the King, or attempts to wage such war, or abets the waging of such war, shall be punished with death, or imprisonment for life and shall forfeit all his property.

Waging or attempting to wage war or abetting waging of war against His Highness or the King.

Illustrations.

(a) A joins an insurrection against His Highness or the King. A has committed the offence defined in this section.

(b) A in Poonch abets an insurrection against His Highness' Government by sending arms to the insurgents. A is guilty of abetting the waging of war against His Highness.

121-A. Whoever within or without Jammu and Kashmir State or British India conspires to commit any of the offences punishable by section 121, or to deprive His Highness or the King of the sovereignty of Jammu and Kashmir State or of British India, or of any part thereof, or conspires to overawe, by means of criminal force or the show of criminal force, the Government of His Highness or Government of India or any Local Government, shall be punished with imprisonment for life or any shorter term, or with imprisonment of either description which may extend to ten years and shall forfeit all his property.

EXPLANATION.—To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof.

122. Whoever collects men, arms or ammunition or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against His Highness or the King, shall be punished with imprisonment for life or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

123. Whoever, by any act, or by any illegal omission, conceals the existence of a design to wage war against His Highness or the King, intending by such concealment to facilitate, or knowing it to be likely that such concealment will facilitate, the waging of such war, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

124. Whoever, with the intention of inducing or compelling the Ministers of His Highness' Government, or the Governor of any province, to exercise or refrain from exercising in any manner any of the lawful powers of such Ministers or Governor, assaults or wrongfully restrains, or attempts to restrain, or overawe, by means of criminal force, or the show of criminal force, or attempts to so overawe such Ministers or Governor, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Conspiracy to commit offences punishable by section. 121.

Collecting arms, etc., with intention of waging war against His Highness or the King.

Concealing with intent to facilitate design to wage war.

Assaulting Ministers of His Highness' Government, or the Governor of any province with intent to compel or restrain the exercise of any lawful power.

124-A. Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise (brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards His Majesty or His Highness or the Government established by law in British India or in Jammu and Kashmir State) shall be punished with imprisonment for life to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

B. Sedition.

EXPLANATION 1.—The expression “disaffection” includes disloyalty and all feelings of enmity.

EXPLANATION 2.—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

EXPLANATION 3.—Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

125. Whoever wages war against the Government of any Asiatic Power in alliance or at peace with the King or attempts to wage such war, or abets the waging of such war, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment of either description for a term which may extend to seven years, to which fine may be added, or with fine.

Waging war against any Asiatic Power in alliance with the King.

126. Whoever commits depredation, or makes preparations to commit depredation, on the territories of any Power in alliance or at peace with the King, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of any property used or intended to be used in committing such depredation, or acquired by such depredation.

Committing depredation on territories of Power at peace with the King.

127. Whoever receives any property knowing the same to have been taken in the commission of any of the offences mentioned in sections 125 and 126, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall

Receiving property taken by war or depredation mentioned in sections 125 and 126.

also be liable to fine and to forfeiture of the property so received.

128. Whoever, being a public servant and having the custody of any State prisoner or prisoner of war, voluntarily allows such prisoner to escape from any place in which such prisoner is confined, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Public servant voluntarily allowing prisoner of State or war to escape.

129. Whoever, being a public servant and having the custody of any State prisoner or prisoner of war, negligently suffers such prisoner to escape from any place of confinement in which such prisoner is confined, shall be punished with simple imprisonment for a term which may extend to three years, and shall also be liable to fine.

Public servant negligently suffering such prisoner to escape.

130. Whoever knowingly aids or assists any State Prisoner or prisoner of war in escaping from lawful custody, or rescues or attempts to rescue any such prisoner, or harbours or conceals any such prisoner who has escaped from lawful custody, or offers or attempts to offer any resistance to the recapture of such prisoner, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Aiding escape of, rescuing or harbouring such prisoner

EXPLANATION.—A State prisoner or prisoner of war, who is permitted to be at large on his parole within certain limits in Jammu and Kashmir State is said to escape from lawful custody if he goes beyond the limits within which he is allowed to be at large.

CHAPTER VII.

OF OFFENCES RELATING TO THE ARMY.

131. Whoever abets the committing of mutiny by an officer or soldier in the Army of His Highness or attempts to seduce any such officer or soldier, from his allegiance or his duty, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Abetting mutiny, or attempting to seduce a soldier from his duty.

132. Whoever abets the committing of mutiny by an officer or soldier, in the Army of His Highness shall, if mutiny be committed in consequence of that abetment, be punished with death or with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Abetment of mutiny, if mutiny is committed in consequence thereof.

133. Whoever abets an assault by an officer or soldier, in the Army of His Highness on any superior officer being in the execution of his office, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Abetment of assault by soldier on his superior officer, when in execution of his office.

134. Whoever abets an assault by an officer or soldier, in the Army of His Highness on any superior officer being in the execution of his office, shall, if such assault be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Abetment of such assault if the assault is committed.

135. Whoever abets the desertion of any officer or soldier, in the Army of His Highness, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Abetment of desertion of soldier.

136. Whoever, except as hereinafter excepted, knowing or having reason to believe that an officer or soldier, in the Army of His Highness, has deserted, harbours such officer or soldier, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Harbouring deserter.

EXCEPTION.—This provision does not extend to the case in which the harbour is given by a wife to her husband.

137. Omitted.

138. Whoever abets what he knows to be an act of insubordination by an officer or soldier, in the Army of His Highness, shall, if such act of insubordination be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Abetment of act of insubordination by soldier.

138-A. Omitted.

139. Omitted.

140. Whoever, not being a soldier in the Military service of His Highness, wears any garb or carries any token resembling any garb or token used by such a soldier, with the intention that it may be believed that he is such a soldier, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Wearing garb or carrying token used by soldier.

CHAPTER VIII.

OF OFFENCES AGAINST THE PUBLIC TRANQUILLITY.

141. An assembly of five or more persons is designated an "unlawful assembly", if the common object of the persons composing that assembly is—

Unlawful assembly.

FIRST.—To overawe by criminal force, or show of criminal force, the Government of His Highness the Maharaja Bahadur or any public servant in the exercise of the lawful power of such public servant; or

SECOND.—To resist the execution of any law, or of any legal process; or

THIRD.—To commit any mischief or criminal trespass, or other offence; or

FOURTH.—By means of criminal force, or show of criminal force, to any person to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

FIFTH.—By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

EXPLANATION.—An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

142. Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

Being member of unlawful assembly.

143. Whoever is a member of an unlawful assembly shall be punished with imprisonment of either description for a term which may extend to six months or with fine, or with both.

Punishment.

144. Whoever, being armed with any deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Joining unlawful assembly, armed with deadly weapon

145. Whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Joining or continuing in unlawful assembly knowing it has been commanded to disperse.

146. Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

Rioting.

147. Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Punishment for rioting.

148. Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Rioting armed with deadly weapon.

149. If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

Every member of unlawful assembly guilty of offence committed in prosecution of common object.

150. Whoever hires or engages, or employs, or promotes, or connives at the hiring, engagement or employment of any person to join or become a member of any unlawful assembly, shall be punishable as a member of such unlawful assembly, and for any offence which may be committed by any such person as a member of such unlawful assembly in pursuance of such hiring, engagement or employment, in the same manner as if he had been a member of such unlawful assembly, or himself had com-

Hiring or conniving at hiring, or persons to join unlawful assembly.

mitted such offence.

151. Whoever knowingly joins or continues in any assembly of five or more persons likely to cause a disturbance of the public peace, after such assembly has been lawfully commanded to disperse, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

EXPLANATION.—If the assembly is an unlawful assembly within the meaning of section 141, the offender will be punishable under section 145.

152. Whoever assaults or threatens to assault, or obstructs or attempts to obstruct, any public servant in the discharge of his duty as such public servant, in endeavouring to disperse an unlawful assembly, or to suppress a riot or affray, or uses, or threatens, or attempts to use criminal force to such public servant, shall be punished with imprisonment of either description for a term which may extend to four years, or with fine, or with both.

153. Whoever maliciously, or wantonly, by doing anything which is illegal, gives provocation to any person intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both; and if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

153-A. Whoever by words, either spoken or written, or by signs, or by visible representations, or otherwise, promotes or attempts to promote feelings of enmity or hatred between different classes of [His Majesty or] His Highness' subjects, shall be punished with imprisonment which may extend to two years, or with fine, or with both.

EXPLANATION.—It does not amount to an offence within the meaning of this section to point out, without malicious in-

¹The words "His Majesty or" in 120 (B) Ranbir Dand Bidhi (153-A Ranbir Penal Code) were added vide Notification 4-L/1981, dated 25th August 1981, Government Gazette 21 of 1981 (Bhadon).

For Special Procedure for trial of offences under this section See Notification 13-L/88 as amended by Notification 14-L/88 and Act No. X of 1995. (Editor.)

tention and with an honest view to their removal, matters which are producing or have a tendency to produce, feelings of enmity or hatred between different classes of [His Majesty or] His Highness' subjects.

154. Whenever any unlawful assembly or riot takes place the owner or occupier of the land upon which such unlawful assembly is held, or such riot is committed, and any person having or claiming an interest in such land, shall be punishable with fine not exceeding one thousand rupees,

Owner or occupier of land on which an unlawful assembly is held.

if he or his agent or manager, knowing that such offence is being or has been committed, or having reason to believe it is likely to be committed, do not give the earliest notice thereof in his or their power to the principal officer at the nearest police-station, and do not, in the case of his or their having reason to believe that it was about to be committed, use all lawful means in his or their power to prevent it and, in the event of its taking place, do not use all lawful means in his or their power to disperse or suppress the riot or unlawful assembly.

155. Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, such person shall be punishable with fine, if he or his agent or manager, having reason to believe that such riot was likely to be committed or that the unlawful assembly by which such riot was committed was likely to be held, shall not respectively use all lawful means in his or their power to prevent such assembly or riot from taking place, and for suppressing and dispersing the same.

Liability of person for whose benefit riot is committed.

156. Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom,

Liability of agent of owner or occupier for whose benefit riot is committed.

the agent or manager, of such person shall be punishable with fine, if such agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not use all lawful means in his power to prevent such riot or assembly from taking place and for suppressing and dispersing the same.

157. Whoever harbours, receives or assembles in any house or premises in his occupation or charge, or under his control any persons, knowing that such persons have been hired, engaged or employed, or are about to be hired, engaged or employed, to join or become members of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Harbouring persons hired for an unlawful assembly.

158. Whoever is engaged or hired, or offers or attempts to be hired or engaged, to do or assist in doing any of the acts specified in section 141, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both,

Being hired to take part in an unlawful assembly or riot :

and whoever, being so engaged or hired as aforesaid, goes armed, or engages or offers to go armed, with any deadly weapon or with anything which used as a weapon of offence is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

or to go armed.

159. When two or more persons, by fighting in a public place, disturb the public peace, they are said to "commit an affray".

Affray.

160. Whoever commits an affray, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

Punishment for committing affray.

CHAPTER IX.

OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS.

161. Whoever, being or expecting to be a public servant, accepts or obtains, or agrees to accept, or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person, with the Legislative or Executive Government of His Highness, or with any public servant, as

Public servant taking gratification other than legal remuneration in respect of an official act,

such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

EXPLANATIONS.—“Expecting to be a public servant.” If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

“Gratification.” The word “gratification” is not restricted to pecuniary gratification, or to gratifications estimable in money.

“Legal remuneration.” The words “legal remuneration” are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government, which he serves, to accept.

“A motive or reward for doing.” A person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, comes within these words.

Illustrations.

(a) A, a munsiff, obtains from Z, a banker, a situation in Z's bank for A's brother, as a reward to A for deciding a cause in favour of Z. A has committed the offence defined in this section.

(b) A holding the office of Resident at the Court of a subsidiary Power, accepts a lakh of rupees from the Minister of that Power. It does not appear that A accepted this sum as a motive or reward for doing or forbearing to do any particular official act, or for rendering or attempting to render any particular service to that Power with the British Government. But it does appear that A accepted the sum as a motive or reward for generally showing favour in the exercise of his official functions to that Power. A has committed the offence defined in this section.

(c) A, a public servant, induces Z erroneously to believe that A's influence with the Government has obtained a title for Z, and thus induces Z to give A money as a reward for this service. A has committed the offence defined in this section.

162. Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Legislative or Executive Government of His Highness or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine,

Taking gratification in order, by corrupt or illegal means, to influence public servant.

or with both.

163. Whoever accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Legislative or Executive Government of His Highness or with any public servant, as such, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Illustration.

An advocate who receives a fee for arguing a case before a Judge; a person who receives pay for arranging and correcting a memorial addressed to Government, setting forth the service and claims of the memorialist; a paid agent for a condemned criminal, who lays before the Government statements tending to show that the condemnation was unjust,—are not within this section, inasmuch as they do not exercise or profess to exercise personal influence.

164. Whoever, being a public servant, in respect of whom either of the offences defined, in the last two preceding sections is committed, abets the offence, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Illustration.

A is a public servant. B, A's wife, receives a present as a motive for soliciting A to give an office to a particular person. A abets her doing so. B is punishable with imprisonment for a term not exceeding one year, or with fine, or with both. A is punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

165. Whoever being a public servant, accepts or obtains, or agrees to accept or attempts to obtain, for himself, or for any other person any valuable thing without consideration, or for a consideration which he knows to be inadequate,

from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant or having any connection with the official functions of himself or of any public servant to whom he is subordinate,

or from any person whom he knows to be interested in

or related to the person so concerned,

shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Illustrations.

(a) A, a Collector, hires a house of Z, who has a settlement case pending before him. It is agreed that A shall pay fifty rupees a month, the house being such that, if the bargain were made in good faith, A would be required to pay two hundred rupees a month. A has obtained a valuable thing from Z without adequate consideration.

(b) A, a judge, buys of Z, who has a cause pending in A's Court, Government promissory notes at a discount, when they are selling in the market at a premium. A has obtained a valuable thing from Z without adequate consideration.

(c) Z's brother is apprehended and taken before A, a Magistrate on a charge of perjury. A sells to Z shares in a bank at a premium, when they are selling in the market at a discount. Z pays A for the shares accordingly. The money so obtained by A is a valuable thing obtained by him without adequate consideration.

166. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Public servant disobeying law with intent to cause injury to any person.

Illustration.

A, being an officer directed by law to take property in execution, in order to satisfy a decree pronounced in Z's favour by a Court of Justice, knowingly disobeys that direction of law, with the knowledge that he is likely thereby to cause injury to Z. A has committed the offence defined in this section.

167. Whoever, being a public servant, and being, as such public servant, charged with the preparation or translation of any document, frames or translates that document in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Public servant framing an incorrect document with intent to cause injury.

168. Whoever, being a public servant, and being legally bound as such public servant not to engage in trade, engages in trade, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Public servant unlawfully engaging in trade.

169. Whoever, being a public servant, and being legally bound as such public servant, not to purchase or bid for certain property, purchases or bids for that property, either in his own name or in the name of another, or jointly, or in shares with others, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both; and the property, if purchased, shall be confiscated.

Public servant unlawfully buying or bidding for property.

170. Whoever pretends to hold any particular office as a public servant, knowing that he does not hold such office or falsely personates any other person holding such office, and in such assumed character does or attempts to do any act under colour of such office, shall be punished with imprisonment of either description, for a term which may extend to one year, or with fine, or with both.

Personating a public servant.

171. Whoever, not belonging to a certain class of public servants, wears any garb or carries any token resembling any garb or token used by that class of public servants, with the intention that it may be believed, or with the knowledge that it is likely to be believed, that he belongs to that class of public servants, shall be punished with imprisonment of either description, for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

Wearing garb or carrying token used by public servant with fraudulent intent.

CHAPTER IX-A.

OF OFFENCES RELATING TO ELECTIONS.

171-A. For the purposes of this chapter—

(a) “candidate” means a person who has been nominated as a candidate at any election and includes a person who, when an election is in contemplation, holds himself out as a prospective candidate thereat: provided that he is subsequently nominated as a candidate at such election;

“Candidate,” “electoral right” defined.

(b) “electoral right” means the right of a person to stand, or not to stand as, or to withdraw from being, a candidate or to vote or refrain from voting at an election.

171-B. (1) Whoever—

Bribery.

(i) gives a gratification to any person with the object of inducing him or any other person to exercise any electoral

right or of rewarding any person for having exercised any such right; or

(ii) accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right, commits the offence of bribery:

Provided that a declaration of public policy or a promise of public action shall not be an offence under this section.

(2) A person who offers, or agrees to give, or offers or attempts to procure, a gratification shall be deemed to give a gratification.

(3) A person who obtains or agrees to accept or attempts to obtain a gratification, shall be deemed to accept a gratification and a person who accepts a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, shall be deemed to have accepted the gratification as a reward.

171-C. (1) Whoever voluntarily interferes or attempts to interfere with the free exercise of any electoral right commits the offence of undue influence at an election.

(2) Without prejudice to the generality of the provisions of sub-section (1), whoever—

(a) threatens any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind, or

(b) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of Divine displeasure or of spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter, within the meaning of sub-section (1).

(3) A declaration of public policy or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this section.

171-D. Whoever at an election applies for a voting paper or votes in the name of any other person, whether living or dead, or in a fictitious name, or who having voted once at such election applies at the same election for a voting paper in his own name, and whoever abets, procures or attempts to procure the voting by any person in any such way, commits the offence of personation at an election.

171-E. Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both:

Punishment for bribery. Provided that bribery by treating shall be punished with fine only.

EXPLANATION.—Treating means that form of bribery where the gratification consists in food, drink, entertainment or provision.

171-F. Whoever commits the offence of undue influence or personation at an election shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

171-G. Whoever with intent to affect the result of an election makes or publishes any statement purporting to be a statement of fact which is false and which he either knows or believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, shall be punished with fine.

171-H. Whoever without the general or special authority in writing of a candidate incurs or authorises expenses on account of the holding of any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred rupees:

Illegal payments in connection with an election. Provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate.

171-I. Whoever being required by any law for the time being in force or any rule having the force of law to keep accounts of expenses incurred at or in connection with a election fails to keep such accounts, shall be punished with fine which may extend to five hundred rupees.

Failure to keep election accounts.

CHAPTER X.

OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

172. Whoever absconds in order to avoid being served with a summons, notice or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice or order, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the summons or notice or order is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

173. Whoever in any manner intentionally prevents the serving on himself, or on any other person, of any summons, notice or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice or order,

or intentionally prevents the lawful affixing to any place of any such summons, notice or order,

or intentionally removes any such summons, notice or order from any place to which it is law fully affixed,

or intentionally prevents the lawful making of any proclamation, under the authority of any public servant legally competent, as such public servant, to direct such proclamation to be made,

shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the summons, notice, order or proclamation is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

174. Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same,

intentionally omits to attend at that place or time, or

departs from the place where he is bound to attend before the time at which it is lawful for him to depart,

shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the summons, notice, order or proclamation is to attend in person or by agent in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with a fine which may extend to one thousand rupees, or with both.

Illustrations.

(a) A being legally bound to appear before the High Court of Judicature, Jammu and Kashmir State, in obedience to a subpoena issuing from that Court, intentionally omits to appear. A has committed the offence defined in this section.

(b) A being legally bound to appear before a Sub-Judge, as a witness, in obedience to a summons issued by that Sub-Judge, intentionally omits to appear. A has committed the offence defined in this section.

175. Whoever, being legally bound to produce or deliver up any document to any public servant, as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees or with both ;

or, if the document is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term which may extend to six month or with fine which may extend to one thousand rupees, or with both.

Illustration.

A, being legally bound to produce a document before a Zila Court, intentionally omits to produce the same. A has committed the offence defined in this section.

176. Whoever, being legally bound to give any notice or to furnish information on any subject to any public servant, as such, intentionally omits to give such notice or to furnish such information in the manner and at the time required by law, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the notice or information required to be given respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with simple imprisonment for

a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

177. Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both;

or, if the information which he is legally bound to give respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustrations.

(a) A, a landholder, knowing of the commission of a murder within the limits of his estate, wilfully misinforms the Magistrate of the district that the death has occurred by accident in consequence of the bite of a snake. A is guilty of the offence defined in this section.

(b) A, a village watchman, knowing that a considerable body of strangers has passed through his village in order to commit a decoity in the house of Z, a wealthy marchant residing in a neighbouring place, and being bound, to give early and punctual information of the above fact to the officer of the nearest police-station, wilfully misinforms the police-officer that a body of suspicious characters passed through the village with a view to commit dacoity in a certain distant place in a different direction. Here A is guilty of the offence defined in the latter part of this section.

EXPLANATION.—In section 176 and in this section the word “offence” includes any act committed at any place out of Jammu and Kashmir State which, if committed in Jammu and Kashmir State, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459, and 460; and the word “offender” includes any person who is alleged to have been guilty of any such act.

178. Whoever refuses to bind himself by an oath or affirmation to state the truth, when required so to bind himself by a public servant legally competent to require that he shall so bind himself, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

179. Whoever, being legally bound to state the truth, on any subject to any public servant, refuses to answer any question demanded of him touching that subject by such public servant in the exercise of the legal powers

of such public servant, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

180. Whoever refuses to sign any statement made by him, when required to sign that statement by a public servant legally competent to require that he shall sign that statement, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Refusing to sign statement.

181. Whoever, being legally bound by an oath or affirmation to state the truth on any subject to any public servant or other person authorised by law to administer such oath or affirmation, makes, to such public servant or other person as aforesaid, touching that subject, any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

False statement on oath or affirmation to public servant or person authorised to administer an oath or affirmation.

182. Whoever gives to any public servant any information which he knows or believes to be false, intending thereby, to cause, or knowing it to be likely that he will thereby cause, such public servant—

False information with intent to cause public servant to use his lawful power to the injury of another person.

(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(b) to use the lawful power of such public servant to the injury or annoyance of any person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustrations.

(a) A informs a Magistrate that Z, a Police officer, subordinate to such Magistrate, has been guilty of neglect of duty or misconduct, knowing such information to be false, and knowing it to be likely that the information will cause the Magistrate to dismiss Z. A has committed the offence defined in this section.

(b) A falsely informs a public servant that Z has contraband salt in a secret place, knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of Z's premises, attended with annoyance to Z. A has committed the offence defined in this section.

(c) A falsely informs a police-man that he has been assaulted and robbed in the neighbourhood of a particular village. He does not mention the name of

any person as one of his assailants, but knows it to be likely that in consequence of this information the police will make enquiries and institute searches in the village to the annoyance of the villagers or some of them. A has committed an offence under this section.

183. Whoever offers any resistance to the taking of any property by the lawful authority of any public servant, knowing or having reason to believe that he is such public servant, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine or with both.

184. Whoever intentionally obstructs any sale of property offered for sale by the lawful authority of any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine or with both.

186. Whoever, at any sale of property held by the lawful authority of a public servant, as such, purchases or bids for any property on account of any person, whether himself or any other, whom he knows to be under a legal incapacity to purchase that property at that sale, or bids for such property not intending to perform the obligations under which he lays himself by such bidding, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

186. Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

187. Whoever, being bound by law to render or furnish assistance to any public servant in the execution of his public duty, intentionally omits to give such assistance, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both;

and if such assistance be demanded of him by a public servant legally competent to make such demand for the purposes of executing any process lawfully issued by a Court of Justice, or of preventing the commission of an offence, or of suppressing a riot, or affray, or of apprehending a person charg-

ed with or guilty of an offence, or of having escaped from lawful custody, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

188. Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both;

and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

EXPLANATION.—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

Illustration.

An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in this section.

189. Whoever holds out any threat of injury to any public servant or to any person in whom he believes that public servant to be interested, for the purpose of inducing that public servant to do any act, or to forbear or delay to do any act, connected with the exercise of the public functions of such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

190. Whoever holds out any threat of injury to any person for the purpose of inducing that person to refrain or desist from making a legal application for protection against any injury to any public servant legally empowered, as such to give such protection, or to

Disobedience to order
duly promulgated by
public servant.

Threat of injury to
public servant.

Threat of injury to
induce person to refrain
from applying for protec-
tion to public servant.

cause such protection to be given, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

¹[**190-A.** (1) Whoever publishes, circulates or repeats in public any passage from a newspaper, book or other document copies whereof have been declared to be forfeited to His Highness the Maharaja Bahadur under any law for the time being in force shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both.

Dissemination of contents of proscribed documents.

(2) No court shall take cognizance of an offence punishable under this section unless the Prime Minister has certified that the passage published, circulated or repeated contains, in the opinion of the Prime Minister, seditious or other matter of the nature referred to in sub-section (1) of section 99-A of the Code of Criminal Procedure, or sub-section (1) of section 10 of the Jammu and Kashmir State Press and Publications Act No. 1 of 1989.]

CHAPTER XI.

OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

191. Whoever being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence.

EXPLANATION 1.—A statement is within the meaning of this section, whether it is made verabally or otherwise.

EXPLANATION 2.—A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

Illustrations.

(a) A, in support of a just claim which B has against Z for one thousand rupees, falsely swears on a trial that he heard Z admit the justice of B's claim. A has given false evidence.

(b) A, being bound by an oath to state the truth, states that he believes a certain signature to be the hand-writing of Z, when he does not believe it to be the hand-writing of Z. Here A states that which he knows to be false, and therefore gives false evidence.

(c) A, knowing the general character of Z's hand-writing states that he believes a certain signature to be the hand-writing of Z; A in good faith believing it to be so. Here A's statement is merely as to his belief, and is true as to his belief, and therefore, although the signature may not be the hand-writing of Z, A has not given false evidence.

(d) A, being bound by an oath to state the truth, states that he knows that Z was at a particular place on a particular day, not knowing anything upon the subject. A gives false evidence whether Z was at the place on the day named or not.

(e) A, an interpreter or translator, give or certifies as a true interpretation or translation of a statement or document which he is bound by oath to interpret or translate truly, that which is not and which he does not believe to be a true interpretation or translation. A has given false evidence.

192. Whoever causes any circumstance to exist or makes

Fabricating false evidence.

any false entry in any book or record, or makes any document containing a false statement, intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said "to fabricate false evidence."

Illustrations.

(a) A puts jewels into a box belonging to Z, with the intention that they may be found in that box, and that this circumstance may cause Z to be convicted of theft. A has fabricated false evidence.

(b) A makes a false entry in his shop-book for the purpose of using it as corroborative evidence in a Court of Justice. A has fabricated false evidence.

(c) A, with the intention of causing Z to be convicted of a criminal conspiracy, writes a letter in imitation of Z's hand-writing, purporting to be addressed to an accomplice in such criminal conspiracy, and puts the letter in a place which he knows that the officers of the police are likely to search. A has fabricated false evidence.

193. Whoever intentionally gives false evidence in any

Punishment for false evidence.

stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprison-

ment of either description for a term which may extend to three years, and shall also be liable to fine.

EXPLANATION 1.—A trial before a Court-martial is a judicial proceeding.

EXPLANATION 2.—An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration.

A, in an enquiry before a Magistrate for the purpose of ascertaining whether Z ought to be committed for trial, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

EXPLANATION 3.—An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration.

A, in an enquiry before an officer deputed by a Court of Justice to ascertain on the spot the boundaries of land, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

194. Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which is capital by the law of Jammu and Kashmir State, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine;

and if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence, shall be punished either with death or the punishment hereinbefore described.

195. Whoever gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which, by the law of Jammu and Kashmir State, is not capital, but punishable with imprisonment for life, or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished.

Giving or fabricating false evidence with intent to procure conviction of capital offence ;

If innocent person be thereby convicted and executed.

Giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment.

Illustration.

A given false evidence before a Court of Justice, intending thereby to cause Z to be convicted of a dacoity. The punishment of dacoity is imprisonment for life, or rigorous imprisonment for a term which may extend to ten years, with or without fine. A, therefore, is liable to such imprisonment, with or without fine.

196. Whoever corruptly uses or attempts to use as true or genuine evidence any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.

Using evidence known to be false.

197. Whoever issues or signs any certificate required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence, knowing or believing that such certificate is false in any material point, shall be punished in the same manner as if he gave false evidence.

Issuing or signing false certificate.

198. Whoever corruptly uses or attempts to use any such certificate as a true certificate, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

Using as true a certificate known to be false

199. Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorised by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

False statement made in declaration which is by law receivable as evidence.

200. Whoever corruptly uses or attempts to use as true any such declaration, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

Using as true such declaration knowing it to be false.

EXPLANATION.—A declaration which is inadmissible merely upon the ground of some informality, is a declaration within the meaning of sections 199 and 200.

201. Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence

Causing disappearance of evidence of offence, or giving false information to screen offender—

which he knows or believes to be false,
 shall, if the offence which he knows or believes to have
 been committed is punishable with death,
 if a capital offence; be punished with imprisonment of either
 description for a term which may extend to
 seven years, and shall also be liable to fine;
 and if the offence is punishable with imprisonment for life,
 if punishable with or with imprisonment which may extend
 imprisonment for life; to ten years, shall be punished with impri-
 sonment of either description for a term which may extend to
 three years, and shall also be liable to fine;
 and if the offence is punishable with imprisonment for
 any term not extending to ten years, shall
 if punishable with less than ten years' imprison- be punished with imprisonment of the des-
 ment. cription provided for the offence, for a term
 which may extend to one-fourth part of the longest term
 of the imprisonment provided for the offence, or with fine, or
 with both.

Illustration.

A, knowing that B has murdered Z, assists B to hide the body with the intention of screening B from punishment. A is liable to imprisonment of either description for seven years, and also to fine.

202. Whoever, knowing or having reason to believe that
 an offence has been committed, inten-
 tional omission to give information of offence by person bound to inform. tionally omits to give any information res-
 pecting that offence which he is legally
 bound to give, shall be punished with im-
 prisonment of either description for a term
 which may extend to three months, or with fine, or with
 both.

203. Whoever, knowing or having reason to believe that
 an offence has been committed, gives any
 giving false information respecting an offence com- information respecting that offence which
 mitted. he knows or believes to be false, shall be
 punished with imprisonment of either des-
 cription for a term which may extend to one year, or with fine,
 or with both.

EXPLANATION.—In sections 201 and 202 and in this sec-
 tion the word “offence” includes any act committed at any
 place out of Jammu and Kashmir State which, if committed
 in Jammu and Kashmir State, would be punishable under any
 of the following sections, namely, 302, 304, 382, 392, 393, 394,
 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459,
 and 460.

204. Whoever secretes or destroys any document which he may be lawfully compelled to produce as evidence in a Court of Justice, or in any proceeding lawfully held before a public servant, as such, or obliterates or renders illegible the whole or any part of such document with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Destruction of document to prevent its production as evidence.

205. Whoever falsely personates another, and in such assumed character makes any admission or statement, or confesses judgment, or causes any process to be issued or becomes bail or security, or does any other act in any suit or criminal prosecution, shall be punished with imprisonment of either description for a term which may extend to '[three years], or with fine, or with both.

False personation for purpose of act or proceeding in suit or prosecution.

206. Whoever fraudulently removes, conceals, transfers or delivers to any person any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced, by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Fraudulent removal or concealment of property to prevent its seizure as forfeited or in execution.

207. Whoever fraudulently accepts, receives or claims any property or any interest therein, knowing that he has no right or rightful claim to such property or interest, or practises any deception touching any right to any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which

Fraudulent claim to property to prevent its seizure as forfeited or in execution.

has been made, or which he knows to be likely to be made by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

208. Whoever fraudulently causes or suffers a decree or order to be passed against him at the suit of any person for a sum not due, or for a larger sum than is due to such person or for any property or interest in property to which such person is not entitled, or fraudulently causes or suffers a decree or order to be executed against him after it has been satisfied or for anything in respect of which it has been satisfied, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Illustration.

A institutes a suit against Z. Z, knowing that A is likely to obtain a decree against him, fraudulently suffers a judgment to pass against him, for a larger amount at the suit of B, who has no just claim against him, in order that B, either on his own account or for the benefit of Z, may share in the proceeds of any sale of Z's property which may be made under A's decree. Z has committed an offence under this section.

209. Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a Court of Justice any claims which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

210. Whoever fraudulently obtains a decree or order against any person for a sum not due, or for a larger sum than is due, or for any property or interest in property to which he is not entitled, or fraudulently causes a decree or order to be executed against any person after it has been satisfied or for anything in respect of which it has been satisfied, or fraudulently suffers or permits any such act to be done in his name, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

211. Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; and if such criminal proceeding be instituted on a false charge of an offence punishable with death, imprisonment for

life, or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

212. Whenever an offence has been committed, whoever harbours or conceals a person whom he knows or has reason to believe to be the offender, with the intention of screening him from legal punishment,

shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine;

and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine;

and if the offence is punishable with imprisonment which may extend to one year, and not to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

"Offence" in this section includes any act committed at any place out of Jammu and Kashmir State, which if committed in Jammu and Kashmir State, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460; and every such act shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in Jammu and Kashmir State.

EXCEPTION.—This provision shall not extend to any case in which the harbour or concealment is either by the husband or wife, or by father or mother to his daughter or son, or by son or daughter to his father or mother of the offender.

Illustration.

A, knowing that B has committed dacoity, knowingly conceals B in order to screen him from legal punishment. Here, as B is liable to imprisonment for life, A is liable to imprisonment of either description for a term not exceeding three years, and is also liable to fine.

213. Whoever accepts or attempts to obtain, or agrees to accept, any gratification for himself or any other person, or any restitution of property to himself or any other person, in

Taking gift etc., to screen an offender from punishment

consideration of his concealing an offence or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment,

shall, if the offence is punishable with death, be punished
if a capital offence; with imprisonment of either description for a term which may extend to four years, and shall also be liable to fine;

and if the offence is punishable with imprisonment for life or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;
if punishable with imprisonment for life, or with imprisonment.

and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

214. Whoever gives or causes, or offers or agrees to give or cause, any gratification to any person, or to restore or cause the restoration of any property to any person, in consideration of that person's concealing an offence, or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment,

shall, if the offence is punishable with death, be punished
if a capital offence; with imprisonment of either description for a term which may extend to four years, and shall also be liable to fine;

and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;
if punishable with imprisonment for life, or with imprisonment.

and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

EXCEPTION.—The provisions of sections 213 and 214 do not extend to any case in which the offence may lawfully be compounded.

[Illustrations.] Repealed.

215. Whoever takes or agrees or consents to take any gratification under pretence or on account of helping any person to recover any movable property of which he shall have been deprived by any offence punishable under this Code, shall, unless he uses all means in his power to cause the offender to be apprehended and convicted of the offence, be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

216. Whenever any person convicted of or charged with an offence, being in lawful custody for that offence, escapes from such custody,
Harbouring offender who has escaped from custody or whose apprehension has been ordered—

or whenever a public servant, in the exercise of the lawful powers of such public servant, orders a certain person to be apprehended for an offence, whoever, knowing of such escape or order for apprehension, harbours or conceals that person with the intention of preventing him from being apprehended, shall be punished in the manner following, that is to say,

if the offence for which the person was in custody or is ordered to be apprehended is punishable with death, he shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if the offence is punishable with imprisonment for life, or imprisonment for ten years, he shall be punished with imprisonment of either description for a term which may extend to three years, with or without fine;

and if the offence is punishable with imprisonment which may extend to one year and not to ten years, he shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for such offence, or with fine, or with both.

“Offence” in this section includes also any act or omission of which, a person is alleged to have been guilty out of Jammu and Kashmir State which if he had been guilty of it in Jammu and Kashmir State, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in Jammu and Kashmir State; and every such act or omission shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in Jammu and Kashmir State.

EXCEPTION.—This provision does not extend to the case in which the harbour or concealment is either by the husband or wife, or the father or mother, or by son or daughter, of the person to be apprehended.

216-A. Whoever, knowing or having reason to believe that any persons are about to commit or have recently committed robbery or dacoity, harbours them or any of them, with the intention of facilitating the commission of such robbery or dacoity, or of screening them or any of them from punishment, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

EXPLANATION.—For the purposes of this section it is immaterial whether the robbery or dacoity is intended to be committed, or has been committed, within or without Jammu and Kashmir State.

EXCEPTION.—This provision does not extend to the case in which the harbour is either by the husband or wife or by the mother or father, or by son or daughter, of the offender.

216-B. In sections 212, 216 and 216-A the word “harbour” includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition or means of conveyance, or the assisting a person in any way to evade apprehension.

217. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or subject him to a less punishment than that to which he is liable, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or any charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

218. Whoever, being a public servant, and being as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss or injury to the public or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or with intent to save, or knowing that he is likely there-

by to save, any property from forfeiture or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

219. Whoever, being a public servant, corruptly or maliciously makes or pronounces in any stage of a judicial proceeding, any report, order, verdict, or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Public servant in judicial proceeding corruptly making report etc., contrary to law.

220. Whoever, being in any office which gives him legal authority to commit persons for trial or to confinement, or to keep persons in confinement, corruptly or maliciously commits any person for trial or confinement, or keeps any person in confinement, in the exercise of that authority, knowing that in so doing he is acting contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Commitment for trial or confinement by person having authority who knows that he is acting contrary to law.

221. Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person charged with or liable to be apprehended for an offence, intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows, that is to say:—

Intentional omission to apprehend on the part of public servant bound to apprehend.

with imprisonment of either description for a term which may extend to three years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with death; or

imprisonment for life or imprisonment for a term which may extend to ten years; or

with imprisonment of either description for a term which may extend to one year, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with imprisonment for a term less than ten years.

222. Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person under sentence of a Court of Justice for any offence or lawfully committed to custody, intentionally omits to apprehend such person, or

Intentional omission to apprehend on the part of public servant bound to apprehend person under sentence or lawfully committed.

intentionally suffers such person to escape or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows, that is to say:—

with imprisonment for life or with imprisonment of either description for a term which may extend to fourteen years, with or without fine, if the person in confinement, or who ought to have been apprehended, is under sentence of death; or

with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, is subject, by a sentence of a Court of Justice, or by virtue of a commutation of such sentence, to imprisonment for life, or imprisonment for a term of ten years or upwards; or

with imprisonment of either description for a term which may extend to three years, or with fine, or with both, if the person in confinement, or who ought to have been apprehended, is subject, by a sentence of a Court of Justice, to imprisonment for a term not extending to ten years or if the person was lawfully committed to custody.

223. Whoever, being a public servant, legally bound as such public servant to keep in confinement any person charged with or convicted of any offence or lawfully committed to custody, negligently suffers such person to escape from confinement, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

224. Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged or of which he has been convicted, or escapes or attempts to escape from any custody in which he is lawfully detained for any such offence, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

EXPLANATION.—The punishment in this section is in addition to the punishment for which the person to be apprehended or detained in custody was liable for the offence with which he was charged, or of which he was convicted.

225. Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of any other person for an offence, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained for an offence, shall be punished with imprisonment of either description for a term which may

extend to two years, or with fine, or with both;

or, if the person to be apprehended, or the person rescued or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with imprisonment for life or imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

or, if the person to be apprehended or rescued, or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with death, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

or, if the person to be apprehended or rescued, or attempted to be rescued, is liable under the sentence of a Court of Justice, or by virtue of a commutation of such sentence, to imprisonment for life, or imprisonment for a term of ten years or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

or, if the person to be apprehended or rescued, or attempted to be rescued, is under sentence of death, shall be punished with imprisonment for life or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

225-A. Whoever, being a public servant legally bound as such public servant to apprehend, or to keep in confinement, any person in any case not provided for in section 221, section 222 or section 223, or in any other law for the time being in force, omits to apprehend that person or suffers him to escape from confinement, shall be punished—

Omission to apprehend, or suffering of escape, on part of public servant, in cases not otherwise provided for.

shall be punished—

(a) if he does so intentionally, with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and

(b) if he does so negligently, with simple imprisonment for a term which may extend to two years, or with fine, or with both.

225-B. Whoever, in any case not provided for in section 224 or section 225 or in any other law for the time being in force, intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself or of any other person, or escapes or attempts to escape from any custody in which he is lawfully detained, or rescues or attempts to rescue any other

Resistance or obstruction to lawful apprehension, or escape or rescue, in cases not otherwise provided for.

person from any custody in which that person is lawfully detained, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

226. Omitted.

227. Whoever, having accepted any conditional remission of punishment, knowingly violates any condition on which such remission was granted, shall be punished with the punishment to which he was originally sentenced, if he has already suffered no part of that punishment, and if he has suffered any part of that punishment, then with so much of that punishment as he has not already suffered.

228. Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

229. Whoever, by personation or otherwise, shall intentionally cause, or knowingly suffer himself to be returned, empanelled or sworn as a juror or assessor in any case in which he knows that he is not entitled by law to be so returned, empanelled or sworn, or knowing himself to have been so returned, empanelled or sworn contrary to law, shall voluntarily serve on such jury or as such assessor, shall be punished with imprisonment of either description for a term which extend to two years, or with fine, or with both.

CHAPTER XII.

OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.

230. Coin is metal used for the time being as money, and stamped and issued by the authority of some State or Sovereign Power in order to be so used.

King's coin is metal stamped and issued by the authority of the King, or by the authority of the Government of India, or of the Government of any Presidency, or of any Government in the King's dominions, in order to be used as money; and metal which has been so stamped and issued shall continue to be the King's coin for the purposes of this chapter, notwithstanding that it may have ceased to be used as money.

Illustrations.

(a) Cowries are not coin.

(b) Lumps of unstamped copper, though used as money, are not coin.

(c) Medals are not coin, inasmuch as they are not intended to be used as money.

(d) The coin denominated as the company's rupee is the King's coin.

(e) The "Farukhabad" rupee, which was formerly used as money under the authority of the Government of India, is King's coin although it is no longer so used.

231. Whoever counterfeits or knowingly performs any part of the process of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

EXPLANATION.—A person commits this offence who intending to practise deception, or knowing it to be likely that deception will thereby be practised, causes a genuine coin to appear like a different coin.

232. Whoever counterfeits or knowingly performs any part of the process of counterfeiting the King's coin, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

233. Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

234. Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells, or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting the King's coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

235. Whoever is in possession of any instrument or material, for the purpose of using the same for counterfeiting coin, or knowing or having reason to believe that the same is intended to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three

years, and shall also be liable to fine;

and if the coin to be counterfeited is the King's coin, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

236. Whoever, being within Jammu and Kashmir State, abets the counterfeiting of coin out of Jammu and Kashmir State, shall be punished in the same manner as if he abetted the counterfeiting of such coin within Jammu and Kashmir State.

Abetting in the State counterfeiting out of the State of coin.

237. Whoever imports into Jammu and Kashmir State, or exports therefrom, any counterfeit coin, knowing or having reason to believe that the same is counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Import or export of counterfeit coin.

238. Whoever imports into Jammu and Kashmir State, or exports therefrom, any counterfeit coin which he knows or has reason to believe to be a counterfeit of the King's coin, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Import or export of King's coin.

239. Whoever, having any counterfeit coin, which at the time when he became possessed of it he knew to be counterfeit, fraudulently or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Delivery of coin, possessed with knowledge that it is counterfeit.

240. Whoever, having any counterfeit coin, which is a counterfeit of the King's coin, and which, at the time when he became possessed of it, he knew to be a counterfeit of the King's coin, fraudulently or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Delivery of King's coin, possessed with knowledge that it is counterfeit.

241. Whoever delivers to any other person as genuine, or attempts to induce any other person to receive as genuine any counterfeit coin which he knows to be counterfeit, but which he did not know to be counterfeit at the time

Delivery of coin as genuine which, when first possessed the deliverer did not know to be counterfeit.

when he took it into his possession, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin counterfeited, or with both.

Illustration.

A, a coiner, delivers counterfeit Company's rupees to his accomplice B, for the purposes of uttering them. B sells the rupees to C, another utterer, who buys them knowing them to be counterfeit. C pays away the rupees for goods to D, who receives them, not knowing them to be counterfeit. D after receiving the rupees, discovers that they are counterfeit and pays them away as if they were good. Here D is punishable only under this section, but B and C are punishable under section 239 or 240, as the case may be.

242. Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Possession of counterfeit coin by person who knew it to be counterfeit when he became possessed thereof.

243. Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, which is a counterfeit of the King's coin, having known at the time when he became possessed of it that it was counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

244. Omitted.

245. Omitted.

246. Whoever fraudulently or dishonestly performs on any coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Fraudulently or dishonestly diminishing weight or altering composition of coin.

EXPLANATION.—A person who scoops out part of the coin and puts anything else into the cavity alters the composition of that coin.

247. Whoever fraudulently or dishonestly performs on any of the King's coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description

Fraudulently or dishonestly diminishing weight or altering composition of King's coin.

for a term which may extend to seven years, and shall also be liable to fine.

248. Whoever performs on any coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

249. Whoever performs on any of the King's coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

250. Whoever, having coin in his possession with respect to which the offence defined in section 246 or 248 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

251. Whoever, having coin in his possession with respect to which the offence defined in section 247 or 249 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

252. Whoever fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the sections 246 or 248 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

253. Whoever fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the sections 247 or 249 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

254. Whoever delivers to any other person as genuine or as a coin of a different description from what it is, or attempts to induce any person to receive as genuine, or as a different coin from what it is, any coin in respect of which he knows that any such operation as that mentioned in sections 246, 247, 248 or 249 has been performed, but in respect of which he did not, at the time when he took it into his possession, know that such operation had been performed, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin for which the altered coin is passed, or attempted to be passed.

255. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any stamp issued by Government or by His Highness, for the purpose of revenue, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

EXPLANATION.—A person commits this offence who counterfeits by causing a genuine stamp of one denomination to appear like a genuine stamp of a different denomination.

256. Whoever has in his possession any instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government or by His Highness, for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

257. Whoever makes or performs any part of the process of making, or buys, or sells, or disposes of, any instrument for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the

purpose of counterfeiting any stamp issued by Government or by His Highness, for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

258. Whoever sells, or offers for sale, any stamp which he knows or has reason to believe to be a counterfeit of any stamp issued by Government or by His Highness, for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Sale of counterfeit Government or His Highness' stamp.

259. Whoever has in his possession any stamp which he knows to be a counterfeit of any stamp issued by Government or by His Highness, for the purpose of revenue, intending to use, or dispose of the same as a genuine stamp, or in order that it may be used as a genuine stamp, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Having possession of counterfeit Government or His Highness' stamp.

260. Whoever uses as genuine any stamp, knowing it to be a counterfeit of any stamp issued by Government or by His Highness, for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Using as genuine a Government or His Highness' stamp known to be counterfeit.

261. Whoever fraudulently or with intent to cause loss to the Government or to His Highness, removes or effaces from any substance, bearing any stamp issued by Government or His Highness, for the purpose of revenue, any writing or document for which such stamp has been used, or removes from any writing or document a stamp which has been used for such writing or document, in order that such stamp may be used for a different writing or document, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Effacing writing from substance bearing Government or His Highness' stamp, or removing from document a stamp used for it, with intent to cause loss to Government or His Highness.

262. Whoever fraudulently or with intent to cause loss to the Government or to His Highness, uses for any purpose a stamp issued by Government or by His Highness for the purpose of revenue, which he knows to have been before used, shall be punished with imprisonment of

Using Government or His Highness' stamp known to have been before used.

either description for a term which may extend to two years, or with fine, or with both.

263. Whoever fraudulently or with intent to cause loss to Government or to His Highness, erases or removes from a stamp issued by Government or by His Highness for the purpose of revenue, any mark, put or impressed upon such stamp for the purpose of denoting that the same has been used, or knowingly has in his possession or sells or disposes of any such stamp from which such mark has been erased or removed, or sells or disposes of any such stamp which he knows to have been used, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Erasure of mark denoting that stamp has been used.

263-A. (1) Whoever—

Prohibition of fictitious stamps.

(a) makes, knowingly utters, deals in or sells any fictitious stamp, or knowingly uses for any postal purpose any fictitious stamp, or

(b) has in his possession, without lawful excuse, any fictitious stamp, or

(c) makes or, without lawful excuse, has in his possession any die, plate, instrument or materials for making any fictitious stamp,

shall be punished with fine which may extend to two hundred rupees.

(2) Any such stamp, die, plate, instrument or materials in the possession of any person for making any fictitious stamp may be seized and shall be forfeited.

(3) In this section "fictitious stamp" means any stamp falsely purporting to be issued by Government for the purpose of denoting a rate of postage or any facsimile or imitation or representation, whether on paper or otherwise, of any stamp issued by Government for that purpose.

(4) In this section and also in sections 255 to 263, both inclusive, the word "Government" when used in connection with, or in reference to, any stamp issued for the purpose of denoting a rate of postage, shall, notwithstanding anything in section 17, be deemed to include the person or persons authorised by law to administer executive government in any part of India, and also in any part of His Majesty's dominions or in any foreign country.

CHAPTER XIII.

OF OFFENCES RELATING TO WEIGHTS AND MEASURES.

264. Whoever fraudulently uses any instrument for weighing which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Fraudulent use of false instrument for weighing.

265. Whoever fraudulently uses any false weight or false measure of length or capacity, or fraudulently uses any weight or any measure of length or capacity as a different weight or measure from what it is, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Fraudulent use of false weight or measure.

266. Whoever is in possession of any instrument for weighing, or of any weight, or of any measure of length or capacity, which he knows to be false, and intending that the same may be fraudulently used, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Being in possession of false weight or measure.

267. Whoever makes, sells or disposes of any instrument for weighing, or any weight, or any measure of length or capacity which he knows to be false, in order that the same may be used as true, or knowing that the same is likely to be used as true, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Making, or selling false weight or measure.

CHAPTER XIV.

OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS.

268. A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.

Public Nuisance.

A common nuisance is not excused on the ground that it causes some convenience or advantage.

269. Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Negligent act likely to spread infection of disease dangerous to life.

270. Whoever malignantly does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Malignant act likely to spread infection of disease dangerous to life.

271. Whoever knowingly disobeys any rule made and promulgated by the Government of India, or by any Government, for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels in a state of quarantine with the shore or with other vessels, or for regulating the intercourse between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Disobedience to quarantine rule.

272. Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Adulteration of food or drink intended for sale.

273. Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Sale of noxious food or drink.

274. Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for, any medicinal purpose, as if it had not undergone such adulteration, shall be

Adulteration of drugs.

punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

275. Whoever, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as adulterated, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

276. Whoever knowingly sells, or offers or exposes for sale, or issues from a dispensary for medicinal purposes, any drug or medical preparation, as a different drug or medical preparation, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

277. Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to two months, or with fine which may extend to five hundred rupees, or with both.

278. Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, shall be punished with fine which may extend to fifteen rupees.

279. Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

280. Whoever navigates any vessel in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

281. Omitted.

282. Whoever knowingly or negligently conveys, or causes to be conveyed for hire, any person by water in any vessel, when that vessel is in such a state or so loaded as to endanger the life of that person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

283. Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction or injury to any person in any public way or public line of navigation, shall be punished with simple imprisonment which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

284. Whoever does, with any poisonous substance, any act in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any person,

or knowingly or negligently omits to take such order with any poisonous substance in his possession as is sufficient to guard against probable danger to human life from such poisonous substance,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

285. Whoever does, with fire or any combustible matter, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person,

or knowingly or negligently omits to take such order with any fire or any combustible matter in his possession as is sufficient to guard against any probable danger to human life from such fire or combustible matter,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

286 Whoever does, with any explosive substance, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person,

or knowingly or negligently omits to take such order with any explosive substance in his possession as is sufficient to guard against any probable danger to human life from that substance,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

287. Whoever does, with any machinery, any act so rashly or negligently as to endanger human life or to be likely to cause hurt or injury to any other person,

Negligent conduct with respect to machinery.

or knowingly or negligently omits to take such order with any machinery in his possession or under his care as is sufficient to guard against any probable danger to human life from such machinery,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

288. Whoever, in pulling down or repairing any building, knowingly or negligently omits to take such order with that building as is sufficient to guard against any probable danger to human life from the fall of that building, or

Negligent conduct with respect to pulling down or repairing buildings.

of any part thereof, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

289. Whoever knowingly or negligently omits to take such order with any animal in his possession as is sufficient to guard against any probable danger to human life, or any probable danger of grievous hurt from such animal, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Negligent conduct with respect to animal.

290. Whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with fine which may extend to two hundred rupees.

Punishment for public nuisance in cases not otherwise provided for.

291. Whoever repeats or continues a public nuisance, having been enjoined by any public servant who has lawful authority to issue such injunction not to repeat or continue such nuisance, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

Continuance of nuisance after injunction to discontinue.

[291-A.] Whoever voluntarily obstructs any person from using the water of any well, tank or other source of water supply which is of a public nature and over which no person or class

Punishment for wrongful obstruction to the use of public tanks, wells etc.

of persons has any exclusive right of ownership or enjoyment shall be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to one hundred rupees or with both.]

292. Whoever :—

(a) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution or circulation makes, produces or has in his possession any obscene books, pamphlet, paper, drawing, painting, representation or any other figure or any other obscene object whatsoever, or

(b) imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation, or

(c) takes part in or receives profits from any business in course of which he knows or has reason to believe that any such obscene objects are, for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or

(d) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be procured from or through any person, or

(e) offers or attempts to do any act which is an offence under this section,

shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

EXCEPTION.—This section does not extend to any book, pamphlet, writing, drawing or painting, kept or used *bona fide* for religious purposes or any representation sculptured, engraved, painted or otherwise represented on or in any temple or in any car used for the conveyance of idols, or kept or used for any religious purpose.

293. Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of twenty years any such obscene object as is referred to in the last preceding section, or offers or attempts so to do, shall be punished with imprison-

¹Section 292 (section 212 Ranbir Dand Bidhi) substituted vide Notification No. 16-L of 1983 published in Government Gazette dated 29th Bhadon 1983.

²Section 293 (section 213 Ranbir Dand Bidhi) substituted vide Notification No. 16-L of 1983 published in Government Gazette dated 29th Bhadon 1983.

ment of either description for a term which may extend to six months, or with fine, or with both.

294. Whoever, to the annoyance of others,
Obscene acts and songs.

(a) does any obscene act in any public place, or
 (b) sings, recites or utters any obscene songs, ballad or words, in or near any public place,

shall be punished with imprisonment of either description for a term which may extend to two months, or with fine, or with both.

294-A. Whoever keeps any office or place for the purpose of drawing any lottery not authorised by Government, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.
Keeping lottery office.

And whoever publishes any proposal to pay any sum, or to deliver any goods, or to do or forbear doing anything for the benefit of any person, on any event or contingency relative or applicable to the drawing of any ticket, lot, number or figure, in any such lottery, shall be punished with fine which may extend to one thousand rupees.

CHAPTER XV.

OF OFFENCES RELATING TO RELIGION.

295. Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.
Injuring or defiling place of worship, with intent to insult the religion of any class.

295-A. Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of His Highness the Maharaja Bahadur's subjects, by words, either spoken or written, or by visible representations, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term
Deliberate and malicious acts intended to outrage religious feelings of any class, by insulting its religion or religious beliefs.

¹Sanctioned by His Highness the Maharaja Bahadur vide Notification No. 2-L of 1989, Act II of 1989 published in Government Gazette dated 17th Baisakh 1989,

which may extend to two years, or with fine, or with both.

296. ^{Disturbing religious assembly.} Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship, or religious ceremonies, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

297. ^{Trespassing on burial-places, etc.} Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby, commits any trespass in any place of worship or on any place or sculpture, or any place set apart for the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

298. ^{Uttering words, etc., with deliberate intent to wound religious feelings.} Whoever, with deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person, or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

298-A. ^{Voluntarily slaughtering or killing cow or the like animals.} Whoever voluntarily slaughters or kills any bovine animal [whether domesticated or wild], such as an ox, bull, cow or calf, shall be punished with imprisonment of either description which may extend to ten years, and shall also be liable to fine.

[EXPLANATION.—The expression “Bovine animal” does not include a Gond.]

298-B. ^{Keeping in possession flesh of killed or slaughtered animals as mentioned in 298-A.} Whoever keeps in his possession flesh of any slaughtered animal mentioned in section 298-A above, knowing it or having reasons to believe that the flesh is of such an animal, shall be punished with imprisonment of either description for a term which may extend to one year and shall also be liable to fine which may extend to five hundred rupees.

¹In section 298-A “whether domesticated or wild” added and Explanation substituted vide Notification No. 8-A/L-84 published in Government Gazette dated 6th Aug 1984.

298-C. Whoever voluntarily slaughters or kills any he ^{Killing or slaughtering} or she buffalo shall be punished with fine ^{he or she buffalo.} which may extend to five times the price of the animal killed or slaughtered as determined by the Court.

298-D. Whoever:—

(a) sells or has in his possession any untanned hide or meat or flesh of a Gond, or

(b) brings into or has in his possession, within any town the carcass of a Gond,

shall be punished with imprisonment of either description for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both.

EXPLANATION.—The word “town” for the purposes of clause (b) means a town or a locality which for the time being, is the headquarters of a Tehsil.

CHAPTER XVI.

OF OFFENCES AFFECTING THE HUMAN BODY.

Of offences affecting Life.

299. Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Illustrations.

(a) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z, believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.

(b) A knows Z to be behind a bush. B does not know it. A, intending to cause, or knowing it to be likely to cause, Z's death induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.

(c) A, by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush; A, not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B, or cause death by doing an act that he knew was likely to cause death.

EXPLANATION 1.—A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

EXPLANATION 2.—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to

have caused the death, although by restoring to proper remedies and skilful treatment the death might have been prevented.

EXPLANATION 3.—The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

300. Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

SECONDLY.—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

THIRDLY.—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

FOURTHLY.—If the person committing the act knows that it is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Illustrations.

(a) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(b) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death or such bodily injury as in the ordinary course of nature would cause death.

(c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of a nature. Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death.

(d) A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a pre-meditated design to kill any particular individual.

EXCEPTION 1.—Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

When culpable homicide is not murder.

The above exception is subject to the following provisos:—

FIRST.—That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

SECONDLY.—That the provocation is not given by anything done in obedience to the law or by a public servant in the lawful exercise of the powers of such public servant.

THIRDLY.—That the provocation is not given by anything done in the lawful exercise of the right of private defence.

EXPLANATION.—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Illustrations.

(a) A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, inasmuch as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(b) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.

(c) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, inasmuch as the provocation was given by a thing done by a public servant in the exercise of his powers.

(d) A appears as a witness before Z, a Magistrate. Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.

(e) A attempts to pull Z's nose. Z in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, inasmuch as the provocation was given by a thing done in the exercise of the right of private defence.

(f) Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

EXCEPTION 2.—Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Illustration.

Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A, believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide.

EXCEPTION 3.—Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

EXCEPTION 4.—Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.

EXPLANATION.—It is immaterial in such cases which party offers the provocation or commits the first assault.

EXCEPTION 5.—Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

Illustration.

A, by instigation, voluntarily causes Z, a person under eighteen years of age, to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death; A has therefore abetted murder.

301. If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person, whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

302. Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.

303. Whoever, being under sentence of imprisonment for life, commits murder, shall be punished with death.

304. Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to twelve years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause death.

304-A. Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

305. If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication commits suicide, whoever abets the commission of such suicide shall be punished with death or imprisonment for life, or imprisonment for a term not exceeding twelve years, and shall also be liable to fine.

306. If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

307. Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death.

Illustrations.

(a) A shoots at Z with intention to kill him, under such circumstances that, if death ensued, A would be guilty of murder. A is liable to punishment under this section.

(b) A with the intention of causing the death of a child of tender years exposes it in a desert place. A has committed the offence defined by this section, though the death of the child does not ensue.

(c) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section, and, if by such firing he wounds Z, he is liable to the punishment provided by the latter part of the first paragraph of this section.

(d) A, intending to murder Z, by poison, purchases poison and mixes the same with food which remains in A's keeping; A has not yet committed the offence in this section. A places the food on Z's table or delivers it to Z's servants to place it on Z's table. A has committed the offence defined in this section.

308. Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to six years, or with fine, or with both.

Illustration.

A, on grave and sudden provocation, fires a pistol at Z, under such circumstances that if he thereby caused death he would be guilty of culpable homicide not amounting to murder. A has committed the offence defined in this section.

309. Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

310. Omitted.

311. Omitted.

Of the Causing of Miscarriage, of Injuries to unborn Children, of the Exposure of Infants, and of the Concealment of Births.

312. Whoever voluntarily causes a woman with child to miscarry, shall if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

EXPLANATION.—A woman who causes herself to miscarry, is within the meaning of this section.

313. Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also

be liable to fine.

314. Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine;

Death caused by act done with intent to cause miscarriage.
and if the act is done without the consent of the woman, shall be punished either with imprisonment for life, or with the punishment above mentioned.

If act done without woman's consent.
EXPLANATION.—It is not essential to this offence that the offender should know that the act is likely to cause death.

315. Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

Act done with intent to prevent child being born alive or to cause it to die after birth.
316. Whoever does any act under such circumstances, that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Causing death of quick unborn child by act amounting to culpable homicide.

Illustration.

A, knowing that he is likely to cause the death of a pregnant woman, does an act which, if it caused the death of the woman, would amount to culpable homicide. The woman is injured but does not die; but the death of an unborn quick child with which she is pregnant is thereby caused. A is guilty of the offence defined in this section.

317. Whoever being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Exposure and abandonment of child under twelve years, by parent or person having care of it.
EXPLANATION.—This section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child die in consequence of the exposure.

318. Whoever, by secretly burying or otherwise disposing of the dead body of a child, whether such child die before or after or during its birth, intentionally conceals or endeavours to conceal the birth of such child, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Concealment of birth
by secret disposal of
dead body.

Of Hurt.

319. Whoever causes bodily pain, disease, or infirmity to any person is said to cause hurt.

Hurt.

320. The following kinds of hurt only are designated as "grievous":—

Grievous hurt.

FIRST.—Emasculation.

SECONDLY.—Permanent privation of the sight of either eye.

THIRDLY.—Permanent privation of the hearing of either ear.

FOURTHLY.—Privation of any member or joint.

FIFTHLY.—Destruction or permanent impairing of the powers of any member or joint.

SIXTHLY.—Permanent disfiguration of the head or face.

SEVENTHLY.—Fracture or dislocation of a bone or tooth.

EIGHTHLY.—Any hurt which endangers life or which causes the sufferer to be, during the space of twenty days, in severe bodily pain, or unable to follow his ordinary pursuits.

321. Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt."

Voluntarily
causing
hurt.

322. Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said "voluntarily to cause grievous hurt".

Voluntarily
causing
grievous hurt.

EXPLANATION.—A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt, if intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

Illustration.

A, intending or knowing himself to be likely permanently to disfigure Z's face, gives Z a blow which does not permanently disfigure Z's face, but which causes Z to suffer severe bodily pain for the space of twenty days. A has voluntarily caused grievous hurt.

323. Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

324. Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument, which, used as a weapon of offence is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

325. Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

326. Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

327. Whoever voluntarily causes hurt, for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in

such sufferer to do anything which is illegal or which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

328. Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

329. Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything that is illegal or which may facilitate the commission of an offence, shall be punished with imprisonment for life, or imprisonment of either description for the term which may extend to ten years, and shall also be liable to fine.

330. Whoever voluntarily causes hurt for the purpose of extorting from the sufferer or any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Illustrations.

(a) A, a police-officer, tortures Z in order to induce Z to confess that he committed a crime. A is guilty of an offence under this section.

(b) A, a police-officer, tortures B to induce him to point out where certain stolen property is deposited. A is guilty of an offence under this section.

(c) A, a revenue-officer, tortures Z in order to compel him to pay certain arrears of revenue due from Z. A is guilty of an offence under this section.

(d) A, a zamindar, tortures a raiyat in order to compel him to pay his rent. A is guilty of an offence under this section.

331. Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer or any person interested in the sufferer any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security, or to satisfy any claim or demand or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

332. Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

333. Whoever voluntarily causes grievous hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

334. Whoever voluntarily causes hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

335. Whoever voluntarily causes grievous hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may

extend to four years, or with fine which may extend to two thousand rupees, or with both.

EXPLANATION.—The last two sections are subject to the same provisos as Exception 1, section 300.

336. Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.

Act endangering life or personal safety of others.

337. Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Causing hurt by act endangering life or personal safety of others.

338. Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

Causing grievous hurt by act endangering life or personal safety of others.

Of Wrongful Restraint and Wrongful Confinement.

339. Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

Wrongful restrain.

EXCEPTION.—The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section.

Illustration.

A obstructs a path along which Z has a right to pass, A not believing in good faith that he has a right to stop the path. Z is thereby prevented from passing. A wrongfully restrains Z.

340. Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said “Wrongfully to confine” that person.

Wrongful confinement.

Illustrations

(a) A causes Z to go within a walled space, and locks Z in. Z is thus prevented from proceeding in any direction beyond the circumscribing line of

wall. A wrongfully confines Z.

(b) A places men with firearms at the outlets of a building, and tells Z that they will fire at Z if Z attempts to leave the building. A wrongfully confines Z.

341. Whoever wrongfully restrains any person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

342. Whoever wrongfully confines any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

343. Whoever wrongfully confines any person for three days, or more, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

344. Omitted.

— **345.** Whoever keeps any person in wrongful confinement, knowing that a writ for the liberation of that person has been duly issued, shall be punished with imprisonment of either description for a term which may extend to two years in addition to any term of imprisonment to which he may be liable under any other section of this chapter.

346. Whoever wrongfully confines any person in such manner as to indicate an intention that the confinement of such person may not be known to any person interested in the person so confined, or to any public servant, or that the place of such confinement may not be known to or discovered by any such person or public servant as hereinbefore mentioned, shall be punished with imprisonment of either description for a term which may extend to two years in addition to any other punishment to which he may be liable for such wrongful confinement.

347. Whoever wrongfully confines any person for the purpose of extorting from the person confined or from any person interested in the person confined, any property or valuable security, or of constraining the person confined or any person interested in such person to do anything illegal or to give any information which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

348. Whoever wrongfully confines any person for the purpose of extorting from the person confined or any person interested in the person confined any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the person confined or any person interested in the person confined to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Wrongful confinement to extort confession or compel restoration of property.

Of Criminal Force and Assault.

349. A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling: Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described.

Force-

FIRST.—By his own bodily power.

SECONDLY.—By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person.

THIRDLY.—By inducing any animal to move, to change its motion, or to cease to move.

350. Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause, injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

Criminal force.

Illustrations.

(a) Z is sitting in a moored boat on a river. A unfastens the moorings, and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z, and he does this by disposing substances in such a manner that the motion is produced without any other act on any

person's part. A has therefore intentionally used force to Z; and if he has done so without Z's consent in order to the committing of any offence, or intending or knowing it to be likely that this use of force will cause injury, fear or annoyance to Z, A has used criminal force to Z.

(b) Z is riding in a chariot. A lashes Z's horses, and thereby causes them to quicken their pace. Here A has caused change of motion to Z by inducing the animals to change their motion. A has therefore used force to Z; and if A has done this without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, A has used criminal force to Z.

(c) Z is riding in a palanquin. A, intending to rob Z, seizes the pole, and stops the palanquin. Here A has caused cessation of motion to Z, and he has done this by his own bodily power. A has therefore used force to Z; and as A has acted thus intentionally without Z's consent, in order to the commission of an offence, A has used criminal force to Z.

(d) A intentionally pushes against Z in the street. Here A; has by his own bodily power moved his own person so as to bring it into contact with Z. He has therefore intentionally used force to Z and if he has done so without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, he has used criminal force to Z.

(e) A throws a stone, intending or knowing it to be likely that the stone will be thus brought into contact with Z, or with Z's clothes, or with something carried by Z, or that it will strike water, and dash up the water against Z's clothes or something carried by Z. Here, if the throwing of the stone produce the effect of causing any substance to come into contact with Z, or Z's clothes, A has used force to Z; and if he did so without Z's consent, intending thereby to injure, frighten or annoy Z, he has used criminal force to Z.

(f) A intentionally pulls up a woman's veil. Here A intentionally uses force to her, and if he does so without her consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy her, he has used criminal force to her.

(g) Z is bathing. A pours into the bath water which he knows to be boiling. Here A intentionally by his own bodily power causes such motion in the boiling water as brings that water into contact with Z, or with other water so situated that such contact must affect Z's sense of feeling. A has therefore intentionally used force to Z; and if he has done this without Z's consent, intending or knowing it to be likely that he may thereby cause injury, fear or annoyance to Z, A has used criminal force.

(h) A incites a dog to spring upon Z, without Z's consent. Here, if A intends to cause injury, fear or annoyance to Z, he uses criminal force to Z.

351. Whoever makes any gesture, or any preparation, intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

EXPLANATION.—Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparations such a meaning as may make those gestures or preparations amount to an assault.

Illustrations.

(a) A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause to Z to believe that A is about to strike Z. A has committed an assault.

(b) A begins to unloose the muzzle of a ferocious dog, intending, or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z.

(c) A takes up a stick, saying to Z, "I will give you a beating". Here though the words used by A could in no case amount to an assault and though the mere gesture, unaccompanied by any other circumstances, might not amount to an assault, the gesture explained by the words may amount to an assault.

352. Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

EXPLANATION.—Grave and sudden provocation will not mitigate the punishment for an offence under this section, if the provocation is sought or voluntarily provoked by the offender as an excuse for the offence, or

if the provocation is given by anything done in obedience to the law, or by a public servant, in the lawful exercise of the powers of such public servant, or

if the provocation is given by anything done in the lawful exercise of the right of private defence.

Whether the provocation was grave and sudden enough to mitigate the offence is a question of fact.

353. Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

354. Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

355. Whoever assaults or uses criminal force to any person, intending thereby to dishonour that person, otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

356. Whoever assaults or uses criminal force to any person in attempting to commit theft on any property which that person is then wearing or carrying, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

357. Whoever assaults or uses criminal force to any person, in attempting wrongfully to confine that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

358. Whoever assaults or uses criminal force to any person on grave and sudden provocation given by that person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

EXPLANATION.—The last section is subject to the same explanation as section 352.

Of Kidnapping, Abduction, Slavery and Forced Labour.

359. Kidnapping is of two kinds: kidnapping from Jammu and Kashmir State and kidnapping from lawful guardianship.

360. Whoever conveys any person beyond the limits of Jammu and Kashmir State without the consent of that person, or of some person legally authorised to consent on behalf of that person, is said to kidnap that person from Jammu and Kashmir State.

361. Whoever takes or entices any minor under fourteen years of age if a male, or under sixteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

EXPLANATION.—The words “lawful guardian” in this section include any person lawfully entrusted with the care or custody of such minor or other person.

EXCEPTION.—This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such

act is committed for an immoral or unlawful purpose.

362. Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

Abduction.

363. Whoever kidnaps any person from Jammu and Kashmir State or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to ¹[seven years], and shall also be liable to fine.

Punishment for kidnapping.

364. Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with imprisonment for life or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

¹Kidnapping or abducting in order to murder.

Illustrations.

(a) A kidnaps Z from British India, intending or knowing it to be likely that Z may be sacrificed to an idol. A has committed the offence defined in this section.

(b) A forcibly carries or entices B away from his home in order that B may be murdered. A has committed the offence defined in this section.

365. Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Kidnapping or abducting with intent secretly and wrongfully to confine person.

366. Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Kidnapping or abducting woman to compel her marriage, etc.

²[And whoever by means of criminal intimidation as defined in this Code, or of abuse of authority, or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be forced or seduced to illicit intercourse with another person, shall also be punishable as aforesaid.]

¹The words "seven years" were substituted for "three years" as per Notification No. 13-L/83, dated 30th August 1926, vide Government Gazette No. 22 of 1983 (Assuj).

²Para to section 366 and section 366-A added vide Notification No. 13-L/83, dated 30th August 1926, published in the Government Gazette No. 22 of 1983 (Assuj).

366-A. Whoever by any means whatsoever induces any minor girl under the age of 18 years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be forced or seduced to illicit intercourse with another person, shall be punished with imprisonment which may extend to ten years, and shall also be liable to fine.

366-B. Whoever imports into the State from any place outside the Jammu and Kashmir State, any girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment of either description which may extend to ten years and shall also be liable to fine.

367. Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected, to grievous hurt, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

368. Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose as that with or for which he conceals or detains such person in confinement.

369. Whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly any movable property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

370. Whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

¹See footnote under section 366.

²Section 366-B added vide Act No. VIII of 1989 published in the Government Gazette dated 24th Mar 1989.

371. Whoever habitually imports, exports, removes, buys, sells, traffics or deals in slaves, shall be punished with imprisonment for life, or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

Habitual dealing in slaves.

372. Whoever sells, lets to hire, or otherwise disposes of any [person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution, or illicit intercourse with any person, or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be] employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Selling person for purposes of prostitution, etc.

¹EXPLANATION 1.—When any person under the age of [eighteen] is sold, let for hire, or is otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such person shall, until contrary is proved, be presumed to have disposed of such person with the intent that such person shall be used for the purpose of prostitution.

²EXPLANATION 2.—For the purpose of this section and section 373, “illicit intercourse” means sexual intercourse between persons not united by marriage or by any union or tie which though not amounting to a marriage is recognised by the personal law or custom of the community to which they belong, or when they belong to different communities, of both such communities as constituting between them a *quasi-marital* relation.

373. Whoever buys, hires or otherwise obtains possession of any [person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution, or illicit intercourse with any person, or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be] employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Buying persons for purposes of prostitution, etc.

EXPLANATION 1.—Any prostitute or any person keeping or managing a brothel, who buys, hires, or otherwise obtains

¹Words in brackets in sections 372 and 373 Ranbir Penal Code (Ranbir Dand Bidhi 278 and 279) substituted *vide* Notification No. 13-L/83, dated 30th August 1926, published in the Government Gazette No. 22 of 1983 (Assuj).

²In section 372 Explanation 1 “eighteen” substituted for “sixteen” and Explanation 2 substituted *vide* Notification No. 13-L/83 published in the Government Gazette dated 29th Bhadon 1983.

possession of any person under the age of '[eighteen], shall until contrary is proved, be presumed to have obtained possession of that person with the intent that such person shall be used for the purpose of prostitution.

¹EXPLANATION 2.—“Illicit intercourse” has the same meaning as in section 372.

374. Whoever unlawfully compels any person to labour ^{Unlawful compulsory labour.} against the will of that person, shall be punished with imprisonment of either description for a term which may extend to 3 months, or with fine, or with both.

of Rape.

375. A man is said to commit “rape” who, except in the ^{Rape.} case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions:—

FIRST.—Against her will.

SECONDLY.—Without her consent.

THIRDLY.—With her consent, when her consent has been obtained by putting her in fear of death, or of hurt.

FOURTHLY.—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

FIFTHLY.—With or without her consent, when she is under '[fourteen] years of age.

EXPLANATION.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

EXCEPTION.—Sexual intercourse by a man with his own wife, the wife not being under “[fourteen] years of age, is not rape.

376. Whoever commits rape shall be punished with imprisonment for life, or with imprisonment ^{Punishment for rape.} of either description for a term which may extend to ten years, and shall also be liable to fine.

[Unless the woman raped is his own wife and is not under twelve years of age in which case he shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.]

¹In section 373 (section 279 Ranbir Dand Bidhi), Explanation 1, “eighteen” substituted for “sixteen” and Explanation 2 added and in section 375, clause fifth, “fourteen” substituted for “twelve” *vide* Notification No. 13-L/83 published in the Government Gazette dated 29th Bhadon 1983.

²Vide Notification No. 5-L/85 dated 16th August 1929, substituted for “thirteen” as provided by Notification No. 13-L/83. Notification 5-L/80 was published in the Government Gazette dated 14th Bhadon 1980.

³Added *vide* Notification No. 13-L/83 of 30th August 1926, Government Gazette No. 22 of 1983.

Of Unnatural offences.

377. Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

EXPLANATION.—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

CHAPTER XVII.

OF OFFENCES AGAINST PROPERTY.

Of Theft.

378. Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

EXPLANATION 1.—A thing so long as it is attached to the earth, not being movable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

EXPLANATION 2.—A moving effected by the same act which effects the severance may be a theft.

EXPLANATION 3.—A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it.

EXPLANATION 4.—A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

EXPLANATION 5.—The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

Illustrations.

(a) A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession without Z's consent. Here, as soon as A has severed the tree in order to such taking, he has committed theft.

(b) A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the dog out of Z's possession without Z's consent, A has committed theft as soon as Z's dog has begun to follow A.

(c) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.

(d) A being Z's servant, and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate, without Z's consent. A has committed theft.

(e) Z, going on a journey, entrusts his plate to A, the keeper of a warehouse, till Z shall return. A carries the plate to a goldsmith and sells it. Here the plate was not in Z's possession. It could not therefore be taken out of Z's possession, and A has not committed theft, though he may have committed criminal breach of trust.

(f) A finds a ring belonging to Z on a table in the house which Z occupies. Here the ring is in Z's possession, and if A dishonestly removes it, A commits theft.

(g) A finds a ring lying on the high-road, not in the possession of any person. A by taking it, commits no theft, though he may commit criminal misappropriation of property.

(h) A sees a ring belonging to Z lying on a table in Z's house. Not venturing to misappropriate the ring immediately for fear of search and detection, A hides the ring in a place where it is highly improbable that it will ever be found by Z, with the intention of taking the ring from the hiding place and selling it when the loss is forgotten. Here A, at the time of first moving the ring, commits the theft.

(i) A delivers his watch to Z, a jeweller, to be regulated. Z carries it to his shop. A, not owing to the jeweller any debt for which the jeweller might lawfully detain the watch as security, enters the shop openly, takes his watch by force out of Z's hand, and carries it away. Here A, though he may have committed criminal trespass and assault, has not committed theft, inasmuch as what he did was not done dishonestly.

(j) If A owes money to Z for repairing the watch, and if Z retains the watch lawfully as a security for the debt, and A takes the watch out of Z's possession, with the intention of depriving Z of the property as a security for his debt, he commits theft, inasmuch as he takes it dishonestly.

(k) Again, if A, having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he borrowed on the watch, he commits theft, though the watch is his own property, inasmuch as he takes it dishonestly.

(l) A takes an article belonging to Z out of Z's possession without Z's consent, with the intention of keeping it until he obtains money from Z as a reward for its restoration. Here A takes dishonestly; A has therefore committed theft.

(m) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away book without Z's express consent for the purpose merely of reading it, and with the intention of returning it. Here, it is probable that A may have conceived that he had Z's implied consent to use Z's book. If this was A's impression, A has not committed theft.

(n) A asks charity from Z's wife. She gives a money, food and clothes, which A knows to belong to Z, her husband. Here it is probable that A may conceive that Z's wife is authorised to give away alms. If this was A's impression, A has not committed theft.

(o) A is the paramour of Z's wife. She gives A valuable property, which A knows to belong to her husband Z, and to be such property as she has

not authority from Z to give. If A takes the property dishonestly, he commits theft.

(p) A, in good faith, believing property belonging to Z to be A's own property, takes that property out of B's possession. Here as A does not take dishonestly, he does not commit theft.

379. Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

380. Whoever commits theft in any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or used for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

381. Whoever being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to six years, and shall also be liable to fine.

382. Whoever commits theft, having made preparation for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, to any person, in order to the committing of such theft, or in order to the effecting of his escape after the committing of such theft, or in order to the retaining of property taken by such theft, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Illustrations.

(a) A commits theft on property in Z's possession; and while committing this theft, he has a loaded pistol under his garment, having provided this pistol for the purpose of hurting Z in case Z should resist. A has committed the offence defined in this section.

(b) A picks Z's pocket, having posted several of his companions near him, in order that they may restrain Z, if Z should perceive what is passing and should resist, or should attempt to apprehend A. A has committed the offence defined in this section.

Of Extortion.

383. Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or

valuable security or anything signed or sealed which may be converted into a valuable security, commits "extortion".

Illustrations.

(a) A threatens to publish a defamatory libel concerning Z unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

(b) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain money to A. Z signs and delivers the note. A has committed extortion.

(c) A threatens to send club-men to plough up Z's field unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.

(d) A by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security, A has committed extortion.

384. Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

385. Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

386. Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

387. Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

388. Whoever commits extortion by putting any person in fear of an accusation against that person or any other, of having committed or attempted to commit any offence punishable with death, or with imprisonment for life, or with imprisonment for a term which may extend to ten years, or of having attempted to induce any other person

to commit such offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be one punishable under section 377 of this Code, may be punished with imprisonment for life.

389. Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of an accusation, against that person or any other, of having committed, or attempted to commit, an offence punishable with death or with imprisonment for life, or with imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be punishable under section 377 of this Code, may be punished with imprisonment for life.

Putting person in fear of accusation of offence in order to commit extortion.

Of Robbery and Dacoity.

Robbery.

390. In all robbery there is either theft or extortion.

Theft is "robbery" if in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

When theft is robbery.

Extortion is "robbery" if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, or of instant hurt, or of instant wrongful restraint to that person, or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

When extortion is robbery.

EXPLANATION.—The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, or of instant hurt, or of instant wrongful restraint.

Illustrations.

(a) A holds Z down, and fraudulently takes Z's money and jewels from Z's clothes, without Z's consent. Here A has committed theft, and, in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.

(b) A meets Z on the high-road, shows a pistol, and demands Z's purse. Z, in consequence, surrenders his purse. Here A has extorted the purse from

Z by putting him in fear of instant hurt, and being at the time of committing the extortion in his presence. A has therefore committed robbery.

(c) A meets Z and Z's child on the high-road. A takes the child, and threatens to fling it down a precipice, unless Z delivers his purse. Z, in consequence, delivers his purse. Here A has extorted the purse from Z, by causing Z to be in fear of instant hurt to the child who is there present. A has therefore committed robbery on Z.

(d) A obtains property from Z by saying—"Your child is in the hands of my gang, and will be put to death unless you send us ten thousand rupees." This is extortion, and punishable as such: but it is not robbery unless Z is put in fear of the instant death of his child.

391. When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons, present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "dacoity".

392. Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.

393. Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

394. If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

395. Whoever commits dacoity shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

396. If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or imprisonment for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

397. If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to

any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

398. If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than seven years.

Attempt to commit robbery or dacoity when armed with deadly weapon.

399. Whoever makes any preparation for committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Making preparation to commit dacoity.

400. Whoever, at any time after the passing of this Act shall belong to a gang of persons associated for the purpose of habitually committing dacoity, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Punishment for belonging to gang of dacoits.

401. Whoever, at any time after the passing of this Act, shall belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, and not being a gang of thugs or dacoits, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Punishment for belonging to gang of thieves.

402. Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Assembling for purpose of committing dacoity.

(Of Criminal Misappropriation of Property.)

403. Whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishonest misappropriation of property.

Illustrations.

(a) A takes property belonging to Z out of Z's possession in good faith, believing, at the time when he takes it, that the property belongs to himself. A is not guilty of theft; but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section.

(b) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent. Here, if A was under the impression that he had Z's implied consent to take the book for the purpose of reading it, A has not committed theft. But, if A afterwards sells the book for his own benefit, he is guilty of an offence under this section.

(c) A and B being joint owners of a horse, A takes the horse out of B's possession, intending to use it. Here, as A has a right to use the horse, he does not dishonestly misappropriate it. But, if A sells the horse and appropriates the whole proceeds to his own use, he is guilty of an offence under this section.

EXPLANATION 1.—A dishonest misappropriation for a time only is a misappropriation within the meaning of this section.

Illustrations.

A finds a Government promissory note belonging to Z, bearing a blank endorsement. A, knowing that the note belongs to Z, pledges it with a banker as a security for a loan, intending at a future time to restore it to Z. A has committed an offence under this section.

EXPLANATION 2.—A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to, the owner, does not take or misappropriate it dishonestly, and is not guilty of an offence; but he is guilty of the offence above defined, if he appropriates it to his own use, when he knows or has the means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner and has kept the property a reasonable time to enable the owner to claim it.

What are reasonable means or what is a reasonable time in such a case, is a question of fact.

It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it: it is sufficient if, at the time of appropriating it, he does not believe it to be his own property, or in good faith believes that the real owner cannot be found.

Illustrations.

(a) A finds a rupee on the high-road, not knowing to whom the rupee belongs. A picks up the rupee. Here A has not committed the offence defined in this section.

(b) A finds a letter on the road, containing a bank note. From the direction and contents of the letter he learns to whom the note belongs. He appropriates the note. He is guilty of an offence under this section.

(c) A finds a cheque payable to bearer. He can form no conjecture as to the person who has lost the cheque. But the name of the person, who has drawn the cheque, appears. A knows that this person can direct him to the person in whose favour the cheque was drawn. A appropriates the cheque without attempting to discover the owner. He is guilty of an offence under this section.

(d) A sees Z drop his purse with money in it. A picks up the purse with the intention of restoring it to Z, but afterwards appropriates it to his own use. A has committed an offence under this section.

(e) A finds a purse with money, not knowing to whom it belongs; he afterwards discovers that it belongs to Z, and appropriates it to his own use. A is guilty of an offence under this section.

(f) A finds a valuable ring, not knowing to whom it belongs. A sells it immediately without attempting to discover the owner. A is guilty of an offence under this section.

404. Whoever dishonestly misappropriates or converts to his own use property, knowing that such property was in the possession of a deceased person at the time of that person's decease, and has not since been in the possession of any person legally entitled to such possession, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and, if the offender at the time of such person's decease was employed by him as a clerk or servant, the imprisonment may extend to seven years.

Dishonest misappropriation of property possessed by deceased person at the time of his death.

Illustration.

Z dies in possession of furniture and money. His servant A, before the money comes into the possession of any person entitled to such possession, dishonestly misappropriates it. A has committed the offence defined in this section.

Of Criminal Breach of Trust.

405. Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do commits "criminal breach of trust".

Illustrations.

(a) A, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriates them to his own use. A has committed criminal breach of trust.

(b) A is a warehouse-keeper. Z, going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse-room. A dishonestly sells the goods. A has committed criminal breach of trust.

(c) A, residing in Calcutta, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z, that all sums remitted by Z to A shall be invested by A, according to Z's direction. Z remits a lakh of rupees

to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys the directions and employs the money in his own business. A has committed criminal breach of trust.

(d) But if A, in the last illustration, not dishonestly but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal disobeys Z's directions, and buys shares in the Bank of Bengal, for Z, instead of buying Company's paper, here, though Z should suffer loss, and should be entitled to bring a civil action against A, on account of that loss, yet A, not having acted dishonestly has not committed criminal breach of trust.

(e) A, a revenue-officer, is entrusted with public money and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.

(f) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.

406. Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for criminal breach of trust.

407. Whoever, being entrusted with property as a carrier, wharfinger or warehouse-keeper, commits criminal breach of trust in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Criminal breach of trust by carrier, etc.

408. Whoever, being a clerk or servant or employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Criminal breach of trust by clerk or servant.

409. Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Criminal breach of trust by public servant, or by banker, merchant or agent.

Of the receiving of Stolen Property.

410. Property, the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally

Stolen property.

misappropriated or in respect of which criminal breach of trust has been committed, is designated as "stolen property" whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without British India. But, if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.

411. Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

412. Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly receives from a person, whom he knows or has reason to believe to belong or to have belonged to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

413. Whoever habitually receives or deals in property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

414. Whoever voluntarily assists in concealing or disposing of or making away with property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

[Of Cheating.]

415. Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

EXPLANATION.—A dishonest concealment of facts is a deception within the meaning of this section.

Illustrations.

(a) A by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.

(b) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.

(c) A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.

(d) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonoured, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.

(e) A, by pledging as diamonds articles which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.

(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.

(g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

(h) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.

(i) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z, without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats.

416. A person is said to "cheat by personation" if he cheats by pretending to be some other person,

Cheating by personation.

or by knowingly substituting one person for another, or representing that he or

or any other person is a person other than he or such other person really is.

EXPLANATION.—The offence is committed whether the individual personated is a real or imaginary person.

Illustrations.

(a) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.

(b) A cheats by pretending to be B, a person who is deceased. A cheats by personation.

417. Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Punishment for cheating.

418. Whoever cheats with the knowledge that he is likely thereby to cause a wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound by law, or by legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect.

419. Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for cheating by personation.

420. Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Cheating and dishonestly inducing delivery of property.

Of Fraudulent Deeds and Dispositions of Property.

421. Whoever dishonestly or fraudulently removes, conceals or delivers to any person, or transfers or causes to be transferred to any person, without adequate consideration, any property, intending thereby to prevent, or knowing it to be likely that he will thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors.

422. Whoever dishonestly or fraudulently prevents any debt or demand due to himself or to any other person from being made available according to law for payment of his debts or the debts of such other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishonestly or fraudulently preventing debt being available for creditors.

423. Whoever dishonestly or fraudulently signs, executes or becomes a party to any deed or instrument which purports to transfer or subject to any charge any property, or any interest therein, and which contains any false statement relating to the consideration for such transfer or charge, or relating to the person or persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

424. Whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Of Mischief.

425. Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief".

EXPLANATION 1.—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

EXPLANATION 2.—Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

Illustrations.

(a) A voluntarily burns a valuable security belonging to Z intending to cause wrongful loss to Z. A has committed mischief.

(b) A introduces water into an ice-house belonging to Z and thus causes the ice to melt, intending wrongful loss to Z. A has committed mischief.

(c) A voluntarily throws into a river a ring belonging to Z, with the intention of thereby causing wrongful loss to Z. A has committed mischief.

(d) A, knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to Z, destroys those effects with the intention of thereby preventing Z from obtaining satisfaction of the debt, and of thus causing damage to Z. A has committed mischief.

(e) A having insured a ship, voluntarily causes the same to be cast away, with the intention of causing damage to the underwriters. A has committed mischief.

(f) A causes a ship to be cast away, intending thereby to cause damage to Z who has lent money on bottomry on the ship. A has committed mischief.

(g) A having joint property with Z in a horse, shoots the horse, intending thereby to cause wrongful loss to Z. A has committed mischief.

(h) A causes cattle to enter upon a field belonging to Z, intending to cause and knowing that he is likely to cause damage to Z's crop. A has committed mischief.

426. Whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

427. Whoever commits mischief and thereby causes loss or damage to the amount of '[fifty] rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

428. Whoever commits mischief by killing, poisoning, maiming or rendering useless any animal or animals of the value of ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

429. Whoever commits mischief by killing, poisoning, maiming or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

430. Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, a diminution of the supply of water for agricultural purposes, or for food or drink for human beings or for animals which are property, or for cleanliness or for carrying on any manufacture, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

431. Whoever commits mischief by doing any act which renders or which he knows to be likely to render any public road, bridge, navigable river or navigable channel, natu-

¹Substituted for "one hundred" vide Correction slip published in the Government Gazette dated 4th Sawan 1991.

ral or artificial, impassable or less safe for travelling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

432. Whoever commits mischief by doing any act which causes or which he knows to be likely to cause an inundation or an obstruction to any public drainage attended with injury or damage, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by causing inundation or obstruction to public drainage attended with damage.

433. Omitted.

434. Whoever commits mischief by destroying or moving any land-mark fixed by the authority of a public servant, or by any act which renders such land-mark less useful as such, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Mischief by destroying or moving, etc., a land-mark fixed by public authority.

435. Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, damage to any property to the amount of one hundred rupees or upwards or (where the property is agricultural produce) ten rupees or upward, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

Mischief by fire or explosive substance with intent to cause damage to amount of one hundred or (in case of agricultural produce) ten rupees.

436. Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Mischief by fire or explosive substance with intent to destroy house, etc.

437. Omitted.

438. Omitted.

439. Omitted.

440. Whoever commits mischief, having made preparation for causing to any person death, or hurt, or wrongful restraint, or fear of death, or of hurt, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Mischief committed after preparation made for causing death or hurt.

Of Criminal Trespass.

441. Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or, having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence,

Criminal trespass.

is said to commit "criminal trespass."

442. Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling, or any building used as a place for worship, or as a place for the custody of property, is said to commit "house-trespass".

House-trespass.

EXPLANATION.—The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass.

443. Whoever commits house-trespass having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent or vessel which is the subject of the trespass, is said to commit "lurking house-trespass".

Lurking house-trespass.

444. Whoever commits lurking house-trespass after sunset and before sunrise, is said to commit "lurking house-trespass by night".

Lurking house-trespass by night.

455. A person is said to commit "house-breaking" who commits house-trespass if he effects his entrance into the house or any part of it in any of the six ways hereinafter described; or if, being in the house or any part of it for the purpose of committing an offence, or, having committed an offence therein, he quits the house or any part of it in any of such six ways, that is to say:—

House-breaking.

FIRST.—If he enters or quits through a passage made by himself or by any abettor of the house-trespass, in order to the committing of the house-trespass.

SECONDLY.—If he enters or quits through any passage not intended by any person, other than himself or an abettor of the offence, for human entrance, or through any passage to which he has obtained access by scaling or climbing over any wall or building.

THIRDLY.—If he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the committing of the house-trespass by any means by which that passage was not intended by the occupier

of the house to be opened.

FOURTHLY.—If he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass.

FIFTHLY.—If he effects his entrance or departure by using criminal force or committing an assault, or by threatening any person with assault.

SIXTHLY.—If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by an abettor of the house-trespass.

EXPLANATION.—Any out-house, or building occupied with a house and between which and such house there is an immediate internal communication, is part of the house within the meaning of this section.

Illustrations.

(a) A commits house-trespass by making a hole through the wall of Z's house, and putting his hand through the aperture. This is house-breaking.

(b) A commits house-trespass by creeping into a ship at a port-hole between decks. This is house-breaking.

(c) A commits house-trespass by entering Z's house through a window. This is house-breaking.

(d) A commits house-trespass by entering Z's house through the door, having opened a door which was fastened. This is house-breaking.

(e) A commits house-trespass by entering Z's house through the door, having lifted a latch by putting a wire through a hole in the door. This is house-breaking.

(f) A finds the key of Z's house door, which Z had lost, and commits house-trespass by entering Z's house, having opened the door with that key. This is house-breaking.

(g) Z is standing in his doorway. A forces a passage by knocking Z down, and commits house-trespass by entering the house. This is house-breaking.

(h) Z, the doorkeeper of Y, is standing in Y's doorway. A commits house-trespass by entering the house, having deterred Z from opposing him by threatening to beat him. This is house-breaking.

446. Whoever commits house-breaking after sunset and before sunrise, is said to commit "house-breaking by night."

447. Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

448. Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

449. Whoever commits house-trespass in order to the committing of any offence punishable with death, shall be punished with imprisonment for life, or with rigorous imprisonment for a term not exceeding ten years, and shall also be liable to fine.

House-trespass in order to commit offence punishable with death.

450. Whoever commits house-trespass in order to the committing of any offence punishable with imprisonment for life, shall be punished with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

House-trespass in order to commit offence punishable with imprisonment for life.

451. Whoever commits house-trespass in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to two years, and shall be liable to fine; and, if the offence intended to be committed is theft, the term of the imprisonment may be extended to seven years.

House-trespass in order to commit offence punishable with imprisonment

452. Whoever commits house-trespass, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

House-trespass after preparation for hurt, assault or wrongful restraint.

453. Whoever commits lurking house-trespass or house-breaking, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

Punishment for lurking house-trespass or house-breaking.

454. Whoever commits lurking house-trespass or house-breaking in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and, if the offence intended to be committed is theft, the term of the imprisonment may be extended to ten years.

Lurking house-trespass or house-breaking in order to commit offence punishable with imprisonment.

455. Whoever commits lurking house-trespass or house-breaking, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt or of assault or of wrongful

Lurking house-trespass or house-breaking after preparation for hurt, assault or wrongful restraint.

restraint, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

456. Whoever commits lurking house-trespass by night, or house-breaking by night, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Punishment for lurking house-trespass or house-breaking by night.

457. Whoever commits lurking house-trespass by night, or house-breaking by night, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and, if the offence intended to be committed is theft, the term of the imprisonment may be extended to fourteen years.

Lurking house-trespass or house-breaking by night in order to commit offence punishable with imprisonment.

458. Whoever commits lurking house-trespass by night, or house-breaking by night, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

Lurking house-trespass or house-breaking by night after preparation for hurt, assault or wrongful restraint

459. Whoever, whilst committing lurking house-trespass or house-breaking, causes grievous hurt to any person or attempts to cause death or grievous hurt to any person, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

Grievous hurt caused whilst committing lurking house-trespass or house-breaking.

460. If, at the time of the committing of lurking house-trespass by night or house-breaking by night, any person guilty of such offence shall voluntarily cause or attempt to cause death or grievous hurt to any person, every person jointly concerned in committing such lurking house-trespass by night or house-breaking by night, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

All persons jointly concerned in lurking house-trespass or house-breaking by night punishable where death or grievous hurt caused by one of them.

461. Whoever dishonestly or with intent to commit mischief breaks open or unfastens any closed receptacle which contains or which he believes to contain property, shall be punished

Dishonestly breaking open receptacle containing property.

with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

462. Whoever, being entrusted with any closed receptacle which contains or which he believes to contain property, without having authority to open the same dishonestly, or with intent to commit mischief, breaks open or unfastens that receptacle, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for same offence when committed by person entrusted with custody.

CHAPTER XVIII.

OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY MARKS.

463. Whoever makes any false document or part of a document, with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

Forgery.

Making a false document.

464. A person is said to make a false document—

FIRST.—Who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed, or at a time at which he knows that it was not made, signed, sealed or executed; or

SECONDLY.—Who without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof, after it has been made or executed either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

THIRDLY.—Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document, knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or the nature of the alteration.

Illustrations.

(a) A has a letter of credit upon B for rupees 10,000, written by Z. A in

order to defraud B, adds a cipher to the 10,000, and makes the sum 1,00,000, intending that it may be believed by B that Z so wrote the letter. A has committed forgery.

(b) A, without Z's authority, affixes Z's seal to a document purporting to be a conveyance of an estate from Z to A, with the intention of selling the estate to B and thereby of obtaining from B the purchase-money. A has committed forgery.

(c) A picks up a cheque on a banker signed by B, payable to bearer, but without any sum having been inserted in the cheque. A fraudulently fills up the cheque by inserting the sum of ten thousand rupees. A commits forgery.

(d) A leaves with B, his agent, a cheque on a banker, signed by A, without inserting the sum payable and authorises B to fill up the cheque by inserting a sum not exceeding ten thousand rupees for the purpose of making certain payments. B fraudulently fills up the cheque by inserting the sum of twenty thousand rupees. B commits forgery.

(e) A draws a bill of exchange on himself in the name of B without B's authority, intending to discount it as a genuine bill with a banker and intending to take up the bill on its maturity. Here, as A draws the bill with intent to deceive the banker by leading him to suppose that he had the security of B, and thereby to discount the bill, A is guilty of forgery.

(f) Z's will contains these words—"I direct that all my remaining property be equally divided between A, B and C." A dishonestly scratches out B's name, intending that it may be believed that the whole was left to himself and C. A has committed forgery.

(g) A endorses a Government promissory note and makes it payable to Z or his order by writing on the bill the words "Pay to Z or his order" and signing the endorsement. B dishonestly erases the words "Pay to Z or his order," and thereby converts the special endorsement into a blank endorsement. B commits forgery.

(h) A sells and conveys an estate to Z. A afterwards, in order to defraud Z of his estate, executes a conveyance of the same estate to B, dated six months earlier than the date of the conveyance to Z, intending it to be believed that he had conveyed the estate to B before he conveyed it to Z. A has committed forgery.

(i) Z dictates his will to A. A intentionally writes down a different legatee from the legatee named by Z, and by representing to Z that he has prepared the will according to his instructions, induces Z to sign the will. A has committed forgery.

(j) A writes a letter and signs it with B's name without B's authority certifying that A is a man of good character and in distressed circumstances from unforeseen misfortune, intending by means of such letter to obtain alms from Z and other persons. Here, as A made a false document in order to induce Z to part with property, A has committed forgery.

(k) A without B's authority writes a letter and signs it in B's name certifying to A's character, intending thereby to obtain employment under Z. A has committed forgery, inasmuch as he intended to deceive Z by a false certificate, and thereby to induce Z to enter into an express or implied contract for service.

EXPLANATION 1.—A man's signature of his own name may amount to forgery.

Illustrations.

(a) A signs his own name to a bill of exchange, intending that it may be believed that the bill was drawn by another person of the same name. A has committed forgery.

(b) A writes the words "accepted" on a piece of paper and signs it with Z's name, in order that B may afterwards write on the paper a bill of exchange drawn by B upon Z, and negotiates the bill as though it had been accepted by Z. A is guilty of forgery; and if B, knowing the fact, draws the bill upon the paper pursuant to A's intention, B is also guilty of forgery.

(c) A picks up a bill of exchange payable to the order of a different person of the same name. A endorses the bill in his own name, intending to cause it to be believed that it was endorsed by the person to whose order it was payable: here A has committed forgery.

(d) A purchases an estate sold under execution of a decree against B. B, after the seizure of the estate, in collusion with Z, executes a lease of the estate, to Z at a nominal rent and for a long period, and dates the lease six months prior to the seizure, with intent to defraud A, and to cause it to be believed that the lease was granted before the seizure. B, though he executes the lease in his own name, commits forgery by antedating it.

(e) A, a trader, in anticipation of insolvency, lodges effects with B for A's benefit, and with intent to defraud his creditors; and in order to give a colour to the transaction, writes a promissory note binding himself to pay to B a sum for value received, and antedates the note, intending that it may be believed to have been made before A was on the point of insolvency. A has committed forgery under the first head of the definition.

EXPLANATION 2.—The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

Illustration.

A draws a bill of exchange upon a fictitious person, and fraudulently accepts the bill in the name of such fictitious person with intent to negotiate it. A commits forgery.

465. Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

466. Whoever forges a document, purporting to be a record or proceeding of or in a Court of Justice, or a register of birth, baptism, marriage or burial, or a register kept by a public servant as such, or a certificate or document purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit, or to take any proceedings therein, or to confess judgment, or a power of attorney, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

467. Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal,

interest or dividends thereon, or to receive or deliver any money, movable property or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

468. Whoever commits forgery, intending that the document forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

469. Whoever commits forgery, intending that the document forged shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished, with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

470. A false document made wholly or in part by forgery is designated "a forged document".

471. Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document.

472. Whoever makes or counterfeits any seal, plate or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under section 467 of this Code, or, with such intent, has in his possession any such seal, plate or other instrument, knowing the same to be counterfeit, shall be punishable with imprisonment for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

473. Whoever makes or counterfeits any seal, plate or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under any section of this chapter other than section 467, or, with such intent, has in his possession any such seal, plate or other instrument, knowing the same to be counterfeit, shall be punished with imprisonment of

either description for a term which may extend to seven years, and shall also be liable to fine.

474. Whoever has in his possession any document, know-

Having possession of document described in section 466 or 467 knowing it to be forged and intending to use it as genuine.

ing the same to be forged, and intending that the same shall fraudulently or dishonestly be used as genuine, shall, if the document is one of the description mentioned in section 466 of this Code, be punished with

imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if the document is one of the description mentioned in section 467, shall be punished with imprisonment for life, or with imprisonment of either description, for a term which may extend to seven years, and shall also be liable to fine.

475. Whoever counterfeits upon, or in the substance of,

Counterfeiting device or mark used for authenticating documents described in section 467 or possessing counterfeit marked material.

any material, any device or mark used for the purpose of authenticating any document described in section 467 of this Code, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then

forged or thereafter to be forged on such material, or who, with such intent, has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

476. Whoever counterfeits upon, or in the substance of

Counterfeiting device or mark used for authenticating documents other than those described in section 467, or possessing counterfeit marked material.

any material, any device or mark used for the purpose of authenticating any document other than the documents described in section 467 of this Code, intending that such device or mark shall be used for the purpose of giving the appearance of

authenticity to any document then forged or thereafter to be forged on such material, or who, with such intent, has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

477. Whoever fraudulently or dishonestly, or with intent to cause damage or injury to the public or to any person, cancels, destroys or

Fraudulent cancellation, destruction, etc., of will, authority to adopt, or valuable security.

defaces, or attempts to cancel, destroy or deface, or secretes or attempts to secrete

any document which is or purports to be a will, or an authority to adopt a son, or any valuable security, or commits mischief in respect to such document, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

477-A. Whoever, being a clerk, officer or servant, or employed or acting in the capacity of a clerk, officer or servant, wilfully, and with intent to defraud, destroys, alters, mutilates or falsifies any book, paper, writing, valuable security or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or wilfully, and with intent to defraud, makes or abets the making of any false entry in, or omits or alters or abets the omission or alteration of any material particular from or in, any such book, paper, writing, valuable security or account, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

EXPLANATION.—It shall be sufficient in any charge under this section to allege a general intent to defraud without naming any particular person intended to be defrauded or specifying any particular sum of money intended to be the subject of the fraud, or any particular day on which the offence was committed.

Of Trade, Property and Other Marks

478. A mark used for denoting that goods are the manufacture or merchandise of a particular person is called a trade mark.

479. A mark used for denoting that movable property belongs to a particular person is called a property mark.

480. Whoever marks any goods or any case, package or other receptacle containing goods, or uses any case, package or other receptacle with any mark thereon, in a manner reasonably calculated to cause it to be believed that the goods so marked, or any goods contained in any such receptacle so marked, are the manufacture or merchandise of a person whose manufacture or merchandise they are not, is said to use a false trade mark.

481. Whoever marks any movable property or goods or any case, package or other receptacle containing movable property or goods, or uses any case, package or other receptacle having any mark thereon, in a manner reasonably calculated to cause it to be believed that the property or goods so marked, or any property or goods

contained in any such receptacle so marked, belong to a person to whom they do not belong, is said to use a false property mark.

482. Whoever uses any false trade mark or any false property mark shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

483. Whoever counterfeits any trade mark or property mark used by any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

484. Whoever counterfeits any property mark used by a public servant, or any mark used by a public servant to denote that any property has been manufactured by a particular person or at a particular time or place, or that the property is of a particular quality or has passed through a particular office, or that it is entitled to any exemption, or uses as genuine any such mark knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

485. Whoever makes or has in his possession any die, plate or other instrument for the purpose of counterfeiting a trade mark or property mark, or has in his possession a trade mark or property mark for the purpose of denoting that any goods are the manufacture or merchandise of a person whose manufacture or merchandise they are not, or that they belong to a person to whom they do not belong, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

486. Whoever sells, or exposes, or has in possession for sale or any purpose of trade or manufacture, any goods or thing with a counterfeit trade mark or property mark affixed to or impressed upon the same or to or upon any case, package or other receptacle in which such goods are contained, shall, unless he proves—

(a) that, having taken all reasonable precautions against committing an offence against the section, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the mark, and

(b) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect

to the persons from whom he obtained such goods or things, or

(c) that otherwise he had acted innocently, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

487. Whoever makes any false mark upon any case, package or other receptacle containing goods, in a manner reasonably calculated to cause any public servant or any other person to believe that such receptacle contains goods which it does not contain or that it does not contain goods which it does contain, or that the goods contained in such receptacle are of a nature or quality different from the real nature or quality thereof, shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Making a false mark upon any receptacle containing goods.

488. Whoever makes use of any such false mark in any manner prohibited by the last foregoing section shall, unless he proves that he acted without intent to defraud, be punished as if he had committed an offence against that section.

Punishment for making use of any such false mark.

489. Whoever removes, destroys, defaces or adds to any property mark, intending or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Tampering with property mark with intent to cause injury.

Of Currency-Notes and Bank-Notes.

489-A. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any currency-note or bank-note, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Counterfeiting currency-notes or bank-notes.

EXPLANATION.—For the purposes of this section and of sections 489-B, 489-C and 489-D, the expression “bank-note” means a promissory note or engagement for the payment of money to bearer on demand issued by any person carrying on the business of banking in any part of the world, or issued by or under the authority of any State or Sovereign Power, and intended to be used as equivalent to, or as a substitute for, money.

489-B. Whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

489-C. Whoever has in his possession any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

489-D. Whoever makes, or performs any part of the process of making, or buys or sells or disposes of, or has in his possession, any machinery, instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for forging or counterfeiting any currency-note or bank-note, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

CHAPTER XIX.

OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE.

490. Whoever, being bound by a lawful contract to render his personal service in conveying or conducting any person or any property from one place to another place, or to act as servant to any person during a voyage or journey, or to guard any person or property during a voyage or journey, voluntarily omits so to do, except in the case of illness or ill-treatment, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both.

Illustrations.

(1) A, a palanquin bearer, being bound by legal contract to carry Z from one place to another, runs away in the middle of the stage. A has committed the offence defined in this section.

(b) A, a coolie, being bound by lawful contract to carry Z's baggage from one place to another, throws the baggage away. A has committed the offence defined in this section.

(c) A, a proprietor of bullocks, being bound by legal contract to convey goods on his bullocks from one place to another, illegally omits to do so. A has committed the offence defined in this section.

(d) A, by unlawful means, compels B, a coolie, to carry his baggage. B in the course of the journey puts down the baggage and runs away. Here, as B was not lawfully bound to carry the baggage, he has not committed any offence.

EXPLANATION.—It is not necessary to this offence that the contract should be made with the person for whom the service is to be performed. It is sufficient if the contract is legally made with any person, either expressly or impliedly, by the person who is to perform the service.

Illustration.

A contracts with a dâk company to drive his carriage for a month. B employs the dâk company to convey him on a journey, and during the month the company supplies B with a carriage which is driven by A. A in the course of the journey voluntarily leaves the carriage. Here, although A did not contract with B, A is guilty of an offence under this section.

491. Whoever, being bound by a lawful contract to attend on or to supply the wants of any person who, by reason of youth, or of unsoundness of mind, or of a disease or bodily weakness, is helpless or incapable of providing for his own safety or of supplying his own wants, voluntarily omits so to do, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both.

492. Whoever, being bound by a lawful contract in writing to work for another person as an artificer, workman or labourer, for a period not more than three years, at any place within British India to which by virtue of the contract he has been or is to be conveyed at the expense of such other, voluntarily deserts the service of that other during the continuance of his contract, or without reasonable cause refuses to perform the service which he has contracted to perform, such service being reasonable and proper service, shall be punished with imprisonment of either description for a term not exceeding one month, or with fine not exceeding double the amount of such expense, or with both; unless the employer has ill-treated him or neglected to perform the contract on his part.

CHAPTER XX.

OF OFFENCES RELATING TO MARRIAGE.

493. Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

494. Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

EXCEPTION.—This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction,

nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time, provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

495. Whoever commits the offence defined in the last preceding section having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

496. Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

497. Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual inter-

Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.

Marrying again during lifetime of husband or wife.

Same offence with concealment of former marriage from person with whom subsequent marriage is contracted.

Marriage ceremony fraudulently gone through without lawful marriage.

Adultery.

course not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to four years, or with fine, or with both. In such case the wife shall be punishable as an abettor.

498. Whoever takes or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to '[five years]', or with fine, or with both. In such case the woman shall be liable to be punished as an abettor.

Enticing or taking away or detaining with Criminal intent a married woman.

CHAPTER XXI.

OF DEFAMATION.

499. Whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Defamation.

EXPLANATION 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

EXPLANATION 2.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

EXPLANATION 3.—An imputation in the form of an alternative or expressed ironically, may amount to defamation.

EXPLANATION 4.—No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Illustrations.

(a) A says—"Z is an honest man; he never stole B's watch" intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it fall within one of the exceptions.

(b) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

(c) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

FIRST EXCEPTION.—It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Imputation of truth which public good requires to be made or published.

SECOND EXCEPTION.—It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Public conduct of public servants.

THIRD EXCEPTION.—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

Conduct of any person touching any public question.

Illustration.

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such meeting informing or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

FOURTH EXCEPTION.—It is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Publication of reports of proceedings of Courts.

EXPLANATION.—A justice of the Peace or other officer holding an enquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.

FIFTH EXCEPTION.—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person

Merits of case decided in Court or conduct of witnesses and others concerned.

son as a party, witness or agent in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Illustrations.

(a) A says—"I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest". A is within this exception if he says this in good faith, inasmuch as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no further.

(b) But if A says—"I do not believe what Z asserted at that trial because I know him to be a man without veracity". A is not within this exception, inasmuch as the opinion which he expresses of Z's character, is an opinion not founded on Z's conduct as a witness.

SIXTH EXCEPTION.—It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Merits of public performance.

EXPLANATION.—A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

Illustrations.

(a) A person who publishes a book, submits that book to the judgment of the public.

(b) A person who makes a speech in public, submits that speech to the judgment of the public.

(c) An actor or singer who appears on a public stage, submits his acting or singing to the judgment of the public.

(d) A says of a book published by Z—"Z's book is foolish; Z must be a weak man. Z's book is indecent; Z must be a man of impure mind." A is within this exception, if he says this in good faith, inasmuch as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no further.

(e) But if A says—"I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine." A is not within this exception inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

SEVENTH EXCEPTION.—It is not defamation in a person having over another any authority; either conferred by law or arising out of a lawful contract made with that other to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Censure passed in good faith by person having lawful authority over another.

Illustration.

A Judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his order; a parent censuring in good faith a child in the presence of other children; a schoolmaster, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils, a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier—are within this exception.

EIGHTH EXCEPTION.—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject matter of accusation.

Accusation preferred in good faith to authorised person.

Illustration.

If A in good faith accuses Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, a child, to Z's father—A is within this exception.

NINTH EXCEPTION.—It is not defamation to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good.

Imputation made in good faith by person for protection of his or other's interests.

Illustrations.

(a) A, a shopkeeper, says to B, who manages his business "Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty." A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests.

(b) A, a Magistrate, in making a report to his superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within the exception.

TENTH EXCEPTION.—It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

Caution intended for good of person to whom conveyed or for public good.

500. Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Punishment for defamation.

501. Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for

Printing or engraving matter known to be defamatory.

a term which may extend to two years, or with fine, or with both.

502. Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Sale of printed or engraved substance containing defamatory matter.

CHAPTER XXII.

OF CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE.

503. Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Criminal intimidation.

EXPLANATION.—A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.

Illustration.

A, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.

504. Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Intentional insult with intent to provoke breach of the peace.

505. Whoever makes, publishes or circulates any statement, rumour or report,—

Statements conducing to public mischief.

(a) with intent to cause, or which is likely to cause, any officer or soldier in the army of His Majesty or His Highness to mutiny or otherwise disregard or fail in his duty as such; or

(b) with intent to cause, or which is likely to cause, fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquillity; or

(c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence

against any other class or community,

shall be punished with imprisonment which may extend to two years, or with fine, or with both.

EXCEPTION.—It does not amount to an offence, within the meaning of this section, when the person making, publishing or circulating any such statement, rumour or report has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes or circulates it without any such intent as aforesaid.

506. Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

507. Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence by the last preceding section.

508. Whoever voluntarily causes or attempts to cause any person to do anything which that person is not legally bound to do, or to omit to do anything which he is legally entitled to do,

by inducing or attempting to induce that person to believe that he or any person in whom he is interested will become or will be rendered by some act of the offender an object of Divine displeasure if he does not do the thing which it is the object of the offender to cause him to do, or if he does the thing which it is the object of the offender to cause him to omit,

shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Illustrations.

(a) A sits dhurna at Z's door with the intention of causing it to be believed that, by so sitting, he renders Z an object of Divine displeasure. A has

committed the offence defined in this section.

(b) A threatens Z that, unless Z performs a certain act, A will kill one of A's own children, under such circumstances that the killing would be believed to render Z an object of Divine displeasure. A has committed the offence defined in this section.

509. Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word, or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

510. Whoever, in a state of intoxication, appears in any public place, or in any place which it is a trespass in him to enter, and there conducts himself in such a manner as to cause annoyance to any person, shall be punished with simple imprisonment for a term which may extend to twenty-four hours, or with fine which may extend to ten rupees, or with both.

CHAPTER XXIII.

OF ATTEMPTS TO COMMIT OFFENCES.

511. Whoever attempts to commit an offence punishable by this Code with imprisonment for life or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with imprisonment for life or imprisonment of any description provided for the offence, for a term of imprisonment for life or imprisonment which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

Illustrations.

(a) A makes an attempt to steal some jewels by breaking open a box, and finds after so opening the box, that there is no jewel in it. He has done an act towards the commission of theft, and therefore, is guilty under this section.

(b) A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket. A is guilty under this section.

CHAPTER XXIV.

OF OFFENCES PUNISHABLE WITH WHIPPING.

512. In accordance with the provisions hereinafter contained the offenders are also liable to the punishment of whipping under section 53 of this Code.

Whipping under section 53.
Offences punishable with whipping in lieu of other punishment.

513. Whoever commits any of the following offences, *viz*:—

(a) theft as defined in section 378 of this Code, other than theft by a clerk or servant of property in possession of his master;

(b) theft in a building, tent or vessel as defined in section 379 of this Code;

(c) theft after preparation for, causing death or hurt as defined in section 382 of this Code;

(d) lurking house-trespass or house-breaking as defined in sections 443 and 445 of this Code in order to the committing of any offence punishable with whipping under this section;

(e) lurking house-trespass or house-breaking by night, as defined in sections 444 and 446 of this Code in order to the committing of any offence punishable with whipping under this section,

may be punished with whipping in lieu of any punishment to which he may for such offence be liable under this Code.

514. Whoever—

Offence punishable with whipping in lieu of or in addition to other punishment.

(a) abets, commits or attempts to commit rape as defined in section 375 of this Code;

(b) compels or induces any person by fear of bodily injury to submit to an unnatural offence, as defined in section 377 of this Code;

(c) voluntarily causes hurt in committing or attempting to commit robbery, as defined in section 390 of this Code;

(d) commits dacoity as defined in section 391 of this Code, may be punished with whipping in lieu of or in addition to any other punishment to which he may for such offence be liable under this Code.

515. Any juvenile offender who abets, commits, attempts to commit any offence punishable under this Code, except offences specified in chapter VI and sections 153-A and 505 of this Code

Juvenile offenders when punishable with whipping.

¹ Sections 512—515 (sections 388—391 Ranbir Dand Bidhi), substituted *vide* Notification No. 8-L/83 published in the Government Gazette dated 25th Sawan 1983.

and offences punishable with death, may be punished with whipping in lieu of any other punishment to which he may for such offence, abetment or attempt be liable.

EXPLANATION.—In this section the expression “juvenile offender” means an offender whom the Court after making such enquiry (if any) as may be deemed necessary, shall find to be under sixteen years of age, the finding of the Court in all cases being final and conclusive.

COMPARATIVE TABLE.

Sections of Ranbir Penal Code.	Sections of Ranbir Dand Bidhi.	Sections of Ranbir Penal Code.	Sections of Ranbir Dand Bidhi.	Sections of Ranbir Penal Code.	Sections of Ranbir Dand Bidhi
1	1	33	24	66	53
2	2	34	25	67	54
3	..	35	26	68	55
4	..	36	27	69	56
6	3	37	28	70	56-A
7	4	38	29	71	57
8	5	39	30	72	58
9	6	40	31	73	59
10	7	41	32	74	60
11	8	42	33	75	61
12	9	43	34	76	62
13	10	44	35	77	63
13-A.	10-A	45	36	78	64
14	..	46	37	79	65
15	..	47	37-A	80	66
16	..	48	42	81	67
17	..	49	38	82	68
19	11	50	..	83	69
20	12	51	39	84	70
21	13	52	40	85	71
22	14	52-A	41	86	72
23	15	53	43	87	73
24	16	54	44	88	74
25	17	55	46	89	75
26	18	57	45	90	76
27	19	60	47	91	77
28	20	61	48	92	78
29	21	62	49	93	79
30	22	63	50	94	80
31	..	64	51	95	81
32	23	65	52	96	82

Sections of Ranbir Penal Code.	Sections of Ranbir Dand Bidhi.	Sections of Ranbir Penal Code.	Sections of Ranbir Dand Bidhi.	Sections of Ranbir Penal Code.	Sections of Ranbir Dand Bidhi.
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97	88	141	110	178	137
98	84	142	111	179	137
99	85	143	112	180	137
100	86	144	113	181	..
101	87	145	114	182	140
102	88	146	115	183	138
103	89	147	116	184	138
104	90	148	117	185	141
105	91	149	117-A	186	142-A
106	92	150	118	187	142
107	93	151	119	188	143
108	94	152	120	189	139
108-A	94-A	153	120-A	190	139-A
109	95	153-A	120-B	190-A	..
110	96	154	120-C	191	144
111	97	155	120-D	192	145
112	98	156	120-E	193	146
113	99	157	121	194	147
114	100	158	122	195	148
115	101	159	123	196	149
116	102	160	124	197	149-A
117	102-A	161	125	198	146-B
118	102-B	162	126	199	149-C
119	102-C	163	127	200	159-D
120	102-D	164	128	201	150
120-A	102-E	165	129	202	151
120-B	102-F	166	130	203	152
121	103	167	131	204	153
121-A	103	168	132	205	154
122	103	169	132-A	206	155
123	103	170	133	207	156
124	103	171	134	208	157
124-A	103	171-A	..	209	158
125	103	171-B	..	210	159
126	103	171-C	..	211	160
127	103	171-D	..	212	161
128	103	171-E	..	213	164
129	103	171-F	..	214	165
130	103	171-G	..	215	166
131	104	171-H	..	216	162
132	104	171-I	..	216-A	162-A
133	105	172	135	216-B	162-B
134	105	173	135	217	163
135	106	174	135	218	163-A
136	107	175	135	219	..
138	108	176	136	220	167
140	109	177	136	221	168

Sections of Ranbir Penal Code.	Sections of Ranbir Dand Bidhi.	Sections of Ranbir Penal Code.	Sections of Ranbir Dand Bidhi.	Sections of Ranbir Penal Code.	Sections of Ranbir Dand Bidhi.
222	169	269	193	309	231
223	170	270	194	312	232
224	171	271	194-A	313	233
225	172	272	195	314	234
225-A	172-A	273	196	315	235
225-B	173	274	197	316	236
227	174	275	198	317	237
228	175	276	199	318	238
229	..	277	200	319	239
130	176	278	201	320	240
131	177	279	202	321	241
232	177-A	280	203	322	242
233	178	282	204	323	243
234	178-A	283	205	324	244 (Para 1)
235	179	284	206	325	245
236	180	285	207	326	244 (Para 2)
237	181	286	207-A	327	246
238	181-A	287	207-B	328	247
239	182	288	208	329	246
240	182-A	289	209	330	248
241	183	290	210	331	248
242	184	291	211	332	249
243	184-A	291-A	..	333	249
246	185	292	212	334	250
247	185-A	293	213	335	250
248	186	294	214	336	251
249	186-A	294-A	214-A	337	252
250	187	295	215	338	252
251	187-A	295-A	215-A	339	253
252	188	296	216	340	254
253	188-A	297	217	341	255
254	189	298	218	342	256-A
255	190	298-A	219	343	256-B
256	190-A	298-B	219-A	345	256-C
257	190-B	298-C	219-B	346	256-D
258	190-C	298-D	219-C	347	256-B
259	190-D	299	220	348	256-B
260	190-E	300	221	349	257
261	190-F	301	222	350	258
262	190-G	302	223	351	259
263	190-H	303	224	352	260
263-A	190-I	304	225	353	261
264	191	304-A	226	354	262
265	191	305	227	355	263
266	191	306	228	356	..
267	191-A	307	229	357	..
268	192	308	230	358	265

Sections of Ranbir Penal Code.	Sections of Ranbir Dand Bidhi.	Sections of Ranbir Penal Code.	Sections of Ranbir Dand Bidhi.	Sections of Ranbir Penal Code.	Sections of Ranbir Dand Bidhi.
359	..	404	305	455	347
360	266	405	306	456	348
361	267	406	307	458	349
362	268	407	308	459	350
363	269	408	309	460	351
364	270	409	309	461	352
365	271	410	310	462	353
366	272	411	311	463	354
366-A	272-A	412	312	464	355
366-B	..	413	313	365	356
367	273	414	314	466	357
368	274	415	315	467	358
369	275	416	316	468	359
370	276	417	317	469	360
371	277	418	318	470	361
272	278	419	319	471	362
373	279	420	320	472	363
374	280	421	321	473	364
375	281	422	321-A	474	365
376	282	423	321-B	475	366
377	283	424	322	476	366-A
378	284	425	323	477	367
379	285	426	324	477-A	367
380	285	427	325	478	367-A (1)
381	286	428	326	479	367-A (2)
382	287	429	327	480	367-B
383	288	430	328	481	368
384	289	431	329	482	368-A
385	290	432	329	483	368-B
386	291	434	330	484	368-C
387	292	435	331	485	368-D
388	..	436	332	486	368-E
389	..	440	333	487	369
390	293	441	334	488	369-A
391	297	442	335	489	369-B
392	294	443	341	489-A	369-C
393	295	444	343	489-B	369-D
394	296	445	342	489-C	370
395	298	446	344	489-D	370
396	299	447	336	490	370-A
397	300	448	336	491	..
398	301	449	337	492	371
399	302	450	338	493	..
400	303	451	339	494	372
401	303-A	452	340	495	373
402	302	453	345	496	
403	304	454	346	497	

Sections of Ranbir Penal Code.	Sections of Ranbir Dand Bidhi.	Sections of Ranbir Penal Code.	Sections of Ranbir Dand Bidhi.	Sections of Ranbir Penal Code.	Sections of Ranbir Dand Bidhi.
498	374	504	380	510	386
499	375	505	381	511	387
500	376	406	382	512	388
501	377	507	383	513	389
502	378	508	384	514	390
503	379	509	385	515	391

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